

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 THIRD PARTY
SURRENDER OF ONE DOG

BETWEEN:

D. B.

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

For the Appellant:

Self-represented

For the Respondent:

Andrea Greenwood, Counsel

Date of Hearing:

August 25, 2023

Location of Hearing:

By Zoom

A. 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 third party surrender of the dog Daisy (“Daisy”) belonging to the Appellant by the manager of his former residence located in Campbell River, BC (the Shelter).
2. The Appellant is appealing the July 25, 2023, review decision (the Review Decision) to not return Daisy issued under s. 20.2(4)(b) of the PCAA by Marcie Moriarty, Chief Protection and Outreach Services, 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 their owner with or without conditions or to permit the Society, in its discretion to destroy, sell or otherwise dispose of Daisy. The Appellant in this case is seeking the return of Daisy.
4. On August 25, 2023, a BCFIRB hearing panel (the Panel) held a hearing via Zoom. The hearing was recorded.
5. The Appellant was not represented by counsel. The appellant gave evidence on his own behalf and called two witnesses: R.N. and T.F.
6. The Society was represented by counsel and called two witnesses: Special Provincial Constable (SPC) Angie Mead and Dr. Ken Langelier, Doctor of Veterinary Medicine (DVM).

B. Preliminary Matters

7. Under the *Rules for Practices and Procedures for Appeals* established by BCFIRB, acting under the authority of the *Administrative Tribunals Act*, the Society was given until August 18, 2023 to provide the Appellant and BCFIRB its final hearing submissions, all requirements of which were outlined in a letter issued on July 28, 2023 to both the Appellant and the Society. The Society requested the addition of four late submissions on August 23, 2023 which were reviewed by the Panel with the parties prior to the hearing. The Appellant did not object to the inclusion of the late submissions and those materials were accepted into evidence as Exhibits 18-21.

C. Material Admitted on this Appeal

8. The Panel identified all the documents and other materials 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.

D. History Leading to Third Party Surrender of Daisy and the Day of Surrender

9. On July 7, 2023 the Appellant, who had been living at the Shelter for several weeks, left the Shelter “for a smoke” after an altercation with two other residents. When he attempted to return, the Appellant was told by Shelter staff that he was banned from the Shelter “for the time being” due to his aggressive behaviour.
10. The Appellant requested that Shelter staff give him his dog Daisy (which was still inside the Shelter at the time) and they complied.
11. The Appellant subsequently got into a verbal altercation with two Shelter residents who were standing at the gate waiting to be let into the Shelter by staff. That altercation was recorded by a Shelter security camera and that recording was included as evidence at the hearing. The video recording showed as follows:
 - The Appellant became angry and started waving his hands and shouting at the other two residents.
 - One of the two residents then engaged with the Appellant and made dismissive gestures towards him before turning back to the gate.
 - The Appellant can then be seen shifting his weight back onto one leg, lifting Daisy into the air, and hurling her like a football at the two residents standing at the gate.
 - Daisy flies through the air, bounces off the shoulder of one resident and then appears to then hit the gate before falling to the concrete. This throwing of Daisy and her collision with the other resident, the gate and then the ground was the precipitating incident that ultimately led to the surrender of Daisy (“the Incident”).
 - The video then shows that one of the residents waiting at the gate picking up Daisy and holding her to his chest.
 - The resident then enters the Shelter with the other waiting resident and the gate is apparently locked behind them.
 - The Appellant is then seen yelling and shaking in anger, trying to gain entry to the Shelter to retrieve Daisy. He tries climbing the fence surrounding the Shelter before backing away.
12. After the Incident, Shelter staff called the RCMP to report the Appellant’s conduct. Constable Fay of the Campbell River RCMP attended the Shelter, spoke with Shelter staff and inspected Daisy. In his report, Constable Fay observed that Daisy:

“...had sustained minor visible injuries to her chin as there was fresh blood there. Daisy appeared to be in shock and was trembling...”

13. Constable Fay arrested the Appellant for causing a disturbance and for cruelty to an animal. The Shelter agreed to look after Daisy until animal welfare resources could be engaged. The Appellant spent the night in jail and was released the next morning (Saturday) with a court date to appear with respect to charges that were subsequently dismissed. The Appellant was advised by the RCMP that he was banned from the Shelter, that he would need to contact the RCMP to arrange for a time to pick up his belongings, and that Daisy would remain under the protective care of the Shelter staff.
14. On Saturday morning July 8, 2023 Shelter staff contacted the Society to arrange for a third-party surrender of Daisy. On Monday July 10, 2023, Daisy was surrendered to the Society by the Shelter under Section 10.1 of the PCAA.
15. The Appellant called the Shelter several times over the weekend (July 8-9, 2023) to seek Daisy's return. On Monday, July 10, 2023 SPC Mead contacted the Appellant to advise that he was being criminally investigated for animal cruelty, that Daisy had been third-party surrendered to the Society, and that the Appellant was being served with a Notice of Disposition by the Society.
16. The Appellant advised the Society that he wanted to seek a review of the Notice of Disposition. On July 18, 2023 the Appellant requested and was granted an extension to July 19, 2023 to explain to the Society why Daisy should be returned to him.

E. Review Decision

17. On July 25, 2023, Ms. Moriarty issued her Review Decision in which she outlined her reasons for not returning Daisy to the Appellant.
18. In coming to her decision, Ms. Moriarty reviewed the following:
 - File #365414 Inspection Follow-up Details (IFD) – July 10, 2023;
 - Notice of Disposition – July 10, 2023;
 - Photos of Daisy's Teeth – July 10, 2023;
 - Veterinary Records – July 11, 2023;
 - a current status for Daisy;
 - various email submissions from the Appellant and submissions sent on the Appellant's behalf; and
 - the surveillance footage of the Incident where the Appellant is observed throwing Daisy.
19. Ms. Moriarty was satisfied, based on the evidence, that the SPC reasonably formed the opinion that Daisy was abandoned, as defined in section 10.1 of the PCAA, and that her action to take custody of Daisy to relieve her of distress was appropriate.

20. In considering whether Daisy should be returned to the Appellant, Ms. Moriarity also reviewed statements from the RCMP and residents of the Shelter and concluded as follows:

While you have stated Daisy is your “therapy dog” and your RN has submitted that Daisy is integral to your wellbeing I cannot accept that Daisy’s health and wellbeing should be put at risk in the pursuit of your own. I am also not convinced that there is an adequate or any plan in place to ensure Daisy’s safety and I find your submissions (or lack thereof) to be devoid of the necessary emotion and self-awareness that would leave me with any confidence you understand the severity of this case

Given the evidence on this file, I am not convinced this is the first time you have been aggressive / physically violent with Daisy. Further, I cannot fathom why you would do something of this nature or why you would allow yourself to get so worked up that you would subject Daisy to abuse. It is particularly concerning that you had walked away with Daisy and the two men had disengaged in the altercation when you decided to throw her. Your submissions also lack any information which indicates you recognize the seriousness of this situation or that you have the ability to prevent something similar from happening again in the future. As a result, I am concerned Daisy would be subjected to this treatment again and would feel distress at being in your presence. Experts in animal behaviour have confirmed that animals who have been the subject of abuse can feel subsequent fear and distress if exposed to the presence of the individual that abused them. Physical abuse of an animal is particularly concerning, and as such, I take this decision very seriously. Unfortunately, there is simply nothing before me that would make me feel it would be in the best interest of Daisy to be returned to you. As such, I will not be ordering her return to your care.

21. On July 27, 2023 BCFIRB received a Notice of Appeal of the Review Decision from the Appellant.

F. Key Facts and Evidence

22. In an appeal under the PCAA, the Panel must determine whether the Society (a) properly exercised its authority in taking Daisy into protective custody and (b) whether Daisy should be returned to the Appellant.
23. Below is a summary of the relevant and material evidence presented during the hearing and the submission made by the parties. Although the Panel has fully considered all the evidence presented and submissions made in this appeal, the Panel refers only to the evidence and submissions that it considers necessary to explain its findings of fact and its reasoning in this decision.

Appellant Testimony

24. The Appellant testified that he has been diagnosed with bi-polar disorder and ADHD. He stated that at the time of the Incident he was suffering from a “bad chemical imbalance” of his serotonin levels, high social anxiety and mental health instability.

25. The Appellant testified that on the day of the Incident, he engaged in a verbal altercation outside the Shelter with another resident (A.P.). The two had made plans to rent an apartment together, and the Appellant had given A.P. an \$800 rent deposit. The altercation was provoked by a text message sent to the Appellant from A.P. saying they were no longer friends and that the deposit money was with A.P.'s child's mother in Cumberland and could not be repaid right away.
26. The altercation outside the Shelter was a continuation of a disagreement that had started inside the Shelter. The increased stress, in combination with "everything else", caused a "black-out seizure" that resulted in the Appellant "accidentally" throwing Daisy, a dog "I truly care for and love", at the fence.
27. The Appellant claimed to take ownership of and responsibility for this Incident, and noted that he was now seeing a psychiatrist in Campbell River who had put him on new medications. He stated that he recently secured a full-time job and that he was living with his friend R.N., who was helping him work on ways to reduce stress.
28. In his appeal submissions, the Appellant provided four detailed psychological assessments dating back to 1985 which document his mental health challenges and anger management issues from childhood to his graduation from high school. Those assessments are as follows:
 - Dr. Garth A Stewart. Stewart Psychological Services, Confidential Psychological Assessment. 13 pp. September 4, 1985.
 - Dr. U.T.A. Neuman. Children's Medical Health Centre, Psychological Report. 14 pp. August 20, 1996.
 - Dr. Robert T. Roy. Centre for Advancement in Listening and Language, Psychometric Assessment. 7 pp. October 24, 1998
 - Dr. R. Mulcahy and Dr. W. Wiles. Mulcahy and Associates Confidential Psychological Report. 13 pp. December 14, 2000.
29. The Appellant disagreed with statements provided by other Shelter residents that were submitted in evidence by the Society and which referenced other instances in which the Appellant had abused or neglected Daisy. The Appellant claimed that Daisy only shook when in stressful situations. The Appellant admitted to grabbing Daisy by the tail "as a joke" but that it was a game that they played, and that Daisy liked it. He said that he would never drag Daisy by her tail and that he knew that such conduct was inhumane.
30. The Appellant disagreed that Daisy was abandoned. He noted that following his arrest he spent Friday night in jail but called the Shelter four different times on Saturday, Sunday and Monday to determine when he could come to pick up Daisy. He testified that Shelter staff told him that he had to wait for a management decision on whether he would get his dog back.

31. The Appellant claimed that Daisy is his emotional support dog and that, among other things, is trained to wake him up as he is a heavy sleeper. He stated that he would never hurt or injure her.
32. The Appellant testified that during his July 10, 2023 phone call with SPC Mead the news that Daisy was no longer at the Shelter, but had been transferred to the care of the Society, was so stressful to him that it triggered another bi-polar incident which made him unable to continue the call and required his friend R.N. to step in to finish the conversation. He testified that his psychiatric records – and specifically those of Dr. Blackman - document that when he is put in a very stressful situation he shuts down, and a “blackout seizure” can occur.
33. The Appellant testified that Daisy should be returned to his care as she was his “emotional support” animal and his best friend. He stated further that,

“... I don't have people as friends. I have animals as friends....I can't even go out and public without shaking right now because everybody around here in Campbell River knows that Daisy is attached to my hip. They know that she is part of my life and not having her has brought on even more stress...”
34. The Appellant’s documentary submissions include a statement from Dr. George Halse, Seawatch Medical Clinic, which states that the Appellant “depends on Daisy for grounding and assistance with management of his mental health symptoms...” and a July 18, 2023 letter from Sonja Hartz, RN, Positive Wellness North Island, stating that Daisy is an “...integral part of [the Appellant’s] wellbeing and the focus of his tender care...”
35. The Appellant testified that a return to his care would be in Daisy’s best interest because,

“...she's lived one of the best lives that I can ever provide her and I really want to continue providing that best life that I can do for her and for me, it means everything to me to have her back because I want to prove to you guys... that I can continue providing that best life that I have for her. Like right now I have in the corner set up over there all of her toys and all of her treats again ready for her to come home. Because... this is where she belongs.... I will take any action and I will do anything that this panel wants me to do with conditions, including provide psych reports or whatever I have to do to get my baby girl back...”
36. Under cross-examination, the Appellant acknowledged that he had been made aware by his veterinarian that Dachshund’s are predisposed to spinal injuries and that owners need to take special care to ensure their spine is protected.
37. The Appellant further acknowledged that Daisy is not a certified therapy dog. The Appellant testified that Daisy was trained to wake him up and was an emotional support dog but that she had not passed the certification process last October due to food aggression. The Defendant said he was going to try again this October to have her certified as therapy dog.

38. The Appellant testified that contrary to the statements made by other Shelter residents, Daisy only shook when she was stressed or when he was not around or when she was cold. The Appellant stated that he intended to manage Daisy's stress by getting her certified as a therapy dog which would allow him to bring her to work with him so she could be with him all the time.
39. The Appellant testified that he had sought veterinarian advice with respect to Daisy's shaking and that he was told that Daisy had a particularly strong connection with him and could feel his emotions. He further stated,

"...She knows when I'm getting scared and that's when she starts shaking is from what I've been told by the vet in the past..."
40. The Appellant testified that he carried Daisy 90% of the time when she is in his care and that when approached by a new person she will shake but calms down when held by the Appellant. "...That is how Daisy is, she prefers being in my arms where she can curl up and be safe all the time..."
41. The Appellant stated that he first noticed Daisy's fractured tooth last January, that he had sent a photo of the tooth to his parents, and that his parents' vet had said "it was fine". The Appellant noted that it did not appear to be causing Daisy any pain and that he planned to get it attended to on her upcoming annual vet checkup in July. The Appellant believed that the tooth became further fractured as a result of the Incident.
42. The Appellant acknowledged that he would grab Daisy by the tail as a game for treats but denied that he held Daisy by the tail off the ground with her body unsupported. The statements of other Shelter residents which indicated that he did in fact lift Daisy by her tail, and otherwise abused or neglected Daisy, were put to the Appellant and he testified that the other residents were crackheads and junkies – adding he had never done drugs nor alcohol - and that 90% of their statements were lies. The Appellant noted that with two exceptions - a visit to the supermarket and for a job interview - he never left Daisy in his room and that he took her with him everywhere. He also denied having ever let Daisy jump down to the street from a panel van as claimed by another Shelter resident. He noted instead that she had jumped from the passenger side foot well which was close to the ground. The Appellant also denied dropping her to the floor after holding her as set out in some of the statements.
43. The Appellant testified that he had previously worked for 2 months as a dispatcher with B-Line Taxi but was let go over an altercation with his boss and for 6.5 months for Fat Burger in Courtenay but was let go because he had difficulty commuting back and forth. The Appellant noted that he is now working for a shoe company in Campbell River. He stated that when he first moved to BC from Alberta he attempted to train as a care aid but was unable to complete the certification due to physical limitations from a 2007 accident.

44. The Appellant testified that he had come to live at the Shelter after he had been asked to leave his previous residence where he had lived since last January with his friend R.N. He noted that his chemical imbalance had resulted in a lot of anger issues and arguments. In the words of the Appellant:
- “...I had a chemical imbalance in my brain that I was trying to iron out the medication and with me and [R.N.] there was a lot of fighting back and forth. It wasn't anything that was harming Daisy... It was more him and I were trying to figure out our friendship and I was going through a lot of walks trying to figure out my anger issues...”.
45. He moved into the Shelter because,
- “...I needed to try to grow up and get some life experience because I've been coddled, and I've been like cared for by my mom and dad all my life...”
46. The Appellant testified that when he moved to the Shelter, he noticed Daisy began shaking more. As a result the Appellant made efforts to reconnect with R.N. and to have him provide care for Daisy in instances when the Appellant needed assistance. He noted that he;
- “...started coming to stay with [R.N.] during the day... and having Daisy spend a little bit of time with him again while I was doing things and looking for apartments and having my meetings with my workers and then him and I were hanging out... that's why, after the July 7th incident, I decided that it was right for me to move back in...”
47. The Appellant testified that R.N. had agreed to allow the Appellant to live with him again and that the Appellant was now living with R.N., but that he was also hoping to move to his own place in mid-September.
48. The Appellant testified that his screaming fit during his conversation with SPC Mead on July 10, 2023 arose due to his frustration at having called the Shelter repeatedly over the weekend and on Monday to get his dog back. He stated that he could not understand why the Society had Daisy and that his screaming was accidental; “it set me off in a bi-polar fit”. The Appellant explained that his outburst was not a scream of anger but one of emotional distress because he didn't understand what was going on. At that point, the Appellant noted that he threw the phone and that R.N. continued the conversation with SPC Mead. The Appellant stated that, “That is when I decided, as a human being, I had to do what was best for Daisy and I had to go get the help I needed.”
49. The Appellant testified that he was not on his psychiatric medications at the time of the Incident because his doctor had taken him off his medications. The Appellant stated that when he lived in Alberta, prior to moving to BC, he had been on full psychiatric medications and said that he was compliant. His medications included Trazodone (depression), Seroquel (bi-polar mood stabilizer) and Foquest (ADHD).

50. The Appellant testified that when he moved to BC in 2021, Foquest (ADHD) was not covered by the BC drug plan (\$200 user pay) and his new doctor, Dr. Halse, made the decision to try to manage his bi-polar and ADHD symptoms through environmental factors, weaning him off his psychiatric meds and prescribing only Trazodone (depression) and Bictarvy (HIV).
51. The Appellant testified that was not under the care of a psychiatrist at the time of the Incident, that BC had a 3 year wait for psychiatrists and that he had only been able to secure a psychiatrist the day before the hearing.
52. The Appellant testified that he knew - from his emotions and attitude - that he was unstable and needed to get back on full psychiatric medications. He stated that he had argued this point with his doctor for almost a month. He noted that his doctor was away for the last two weeks in June and that on his return – after securing permission to include a new drug Aripiprazole (an anti-psychotic) under his medical coverage - wrote a new prescription on July 6, 2023 for medications issued in a compliance pack to start July 7, 2023. The Appellant testified that the medications are working and that his new psychiatrist has already taken over and reissued his prescription, placing him back on full psychiatric medications.
53. The Appellant testified that he had obtained counselling services since the Incident but that a subpoena would have been required to get any records in that regard and that he had not obtained that subpoena because he did not think that it would be necessary.
54. The Appellant agreed that he had difficulty controlling his temper and that he had been in counselling and under psychiatric care most of his life. The Appellant disagreed that his inability to control his temper had meant that he was unable to maintain employment despite the findings in the 2006 psychological assessment provided by the Appellant to that effect. The Appellant noted that in 2006 he had just completed high school and that he was 30 now and had grown up a lot since 2006.
55. The Appellant testified that he receives disability assistance (under the Employment and Assistance for Persons with Disabilities Act (PDA)) in the amount of \$1,510.50 a month because of an accident in 2007 that resulted in chronic back problems and numbness on his left side. Under his disability program, he is permitted to earn up to \$25,000 a year, and so he works part time.
56. With respect to the day of the Incident, the Appellant testified that he had left the Shelter for 10 minutes, then went back to get Daisy. He stated that before he left the Shelter he had been yelling and screaming (“having a fit”) because of the \$800 that another Shelter resident (A.P.) owed him. The Shelter staff then brought Daisy down and told him that because of the yelling he was banned for the weekend.

57. The Appellant then went to “track down” A.P. and his friend Dustin (also outside the Shelter) to find out when A.P. would be going to Cumberland to pick up the Appellant’s money. When the Appellant encountered A.P. and Dustin, the situation escalated. The Appellant stated that they were at the gate and yelling “...Who the fuck do you think we are? Shut the fuck up you fucking retard. You fucking fag.... We don’t want to live with a fucking piece of shit...”
58. The Appellant testified that he simply wanted to know when he was going to get his money back and that the stress levels arising from their antagonism and the theft of his \$800 caused him to start to shut down which was the “tipping point” that resulted in the incident. The Appellant stated,
- “...I tossed Daisy in a very inappropriate manner against the gate... I know I did it inappropriately and I know the actions can’t be rectified because I’ve already done the actions and I need to take responsibility for my mistakes...”
59. The Appellant denied that he would conduct himself in a similar manner again if Daisy was returned to his care and similar circumstances arose. He stated,
- “...No, I couldn’t because I’m seeking the necessary help and support that I need. That’s why I’m staying with [R.N.] right now because [R.N.] helps build my self-esteem and he also knows how to work with me and grow with me to gain the confidence and the respect to help minimize my anger and my issues... I’m doing what I have to do to fix this because I really want what’s best for Daisy, and I hope that is having her back in my life because I miss her so much and I just want her with me cause I can care for her, I can treat her like the queen she needs to be treated because I know what’s best for her...”
60. The Appellant’s submissions include a budget in which he estimates his income to be \$3,000 a month; \$1510.50 of which is PDA and the balance from part time work. He also receives a clothing allowance from PDA and a food bank hamper. In his budget, he has set aside \$1,060 a month to pay for Daisy’s dental surgery.
61. The Appellant described his support team and the psychiatric medications he is now taking. His support team consists of his friends R.N., T.F., Shirley Alexander, his new psychiatrist Dr. Finch (regular appointments every 4 to 6 weeks), his positive wellness nurse Fraser (text 4 times per week re HIV meds and mental health), his John Howard team and his work team. He is currently taking Aripiprazole (10 mg every evening), Olanzapine (5 mg twice a day), and starting next week Vyvanse (10 mg/day for 7 days then increasing to 20 mg/day).

Appellant Witnesses:

62. The Appellant called two witnesses, T.F. and R.N.

T.F.

63. T.F testified that he has known the Appellant for 5-8 years. He stated that they are friends and have worked together. He noted that he has stayed with the Appellant and that he has always known the Appellant to be a loving and caring father to his dachshund.
64. T.F. further testified that although the Appellant has had mental issues in the past, he has done his best to rectify those issues and to keep them under control with medication. He stated that the Appellant has always cared for Daisy to the best of his ability and that he would never intentionally harm her or put her in any danger.
65. Under cross examination, T.F. acknowledged that he had not seen the Appellant or Daisy since 2020 but that he remained friends with the Appellant on Facebook.
66. With respect to the Incident, T.F. testified that the Appellant had told him that a fit of anger resulting in a blackout had caused him to throw Daisy against the fence. When questioned on whether the Incident changed his opinion as to whether the Appellant would ever deliberately harm Daisy, T.F. reiterated his statement that he did not believe that the Appellant would do so.

R.N.

67. R.N. testified that he met the Appellant through a common friend and that the Appellant moved in with him in January of 2023. After living together for four months some problems arose – they were arguing, things had become tense - and the Appellant moved out at the end of June for two weeks. R.N. said that after the Incident he agreed the Appellant could move back in with him.
68. He testified that the Appellant dotes on Daisy, and that she is a one-person dog. He stated that when she whines, it is temperature related or due to the Appellant leaving. He further noted that Daisy also sits at the door and whines 5 minutes before the Appellant comes home.
69. R.N. testified that he did not witness any abuse or neglect of Daisy while she was in the Appellant's care. R.N. stated that he understood from the Appellant that the Incident had occurred as a result of the Appellant playing with Daisy around a water sprinkler and that Daisy was wet and had slipped out of the Appellant's hands.
70. R.N. testified that since the Appellant had moved back in with him he had not observed any instances of anger and that the Appellant was compliant with his medications. R.N. noted that he had agreed to the Appellant returning to reside with him on certain conditions including that the Appellant would remain compliant with his medication (taking them in front of R.N.), that he would share his communications with the Positive Wellness worker, that he would see his doctor

regularly and that he would find a psychiatrist to also see regularly. R.N noted that the Appellant had become more like a brother than a roommate.

Respondent Witnesses:

71. The Society called two witnesses, SPC Mead and Dr. Ken Langelier, DVM.

SPC Angie Mead

72. SPC Angie Mead was sworn in and testified to the events leading to Daisy's third-party surrender by the Shelter on July 10, 2023, her subsequent phone calls with the Appellant on July 10, 2023 and July 13, 2023 and the five audio statements she collected August 16, 2023.
73. SPC Mead testified that she has been employed with the Society for 17 years, the last 15 of which she was employed as a special constable. SPC Mead stated that the Society received an animal cruelty complaint from the Shelter on July 8, 2023. SPC Mead was off work on July 8, 2023 and returned the Shelter's call on July 9, 2023. Shelter staff described the Incident, telling SPC Mead that Daisy's owner had been banned from the Shelter and that they had been told by RCMP Constable Fay that they could keep Daisy until animal welfare or the Society was contacted. Shelter staff emailed SPC Mead copies of five handwritten statements from residents raising concerns regarding the Appellant's treatment of Daisy. A plan was put in place to arrange Daisy's third-party surrender to the Society on Monday, July 10, 2023.
74. When SPC Mead picked up Daisy from the Shelter on Monday, July 10, 2023, the Shelter Manager provided her with a copy of the Incident video (which they watched several times together) and the 5 handwritten statements from residents. SPC Mead testified that she was shocked when she viewed the video, commenting that not only was Daisy abused, but she was also weaponized.
75. The individual handwritten statements from five residents of the Shelter - including the two men standing at the gate at the time of the Incident - included assertions that they had witnessed the Appellant throw Daisy like a football at the gate (a distance of over 9 feet), pick her up by her tail and shake her up and down (claiming it was good for her back) and drop her to the ground from chest height (causing her at times to yelp in pain).
76. SPC Mead testified that Daisy was third party surrendered under the abandoned animal provisions (Section 10.1) of the PCCA. SPC Mead stated her understanding that an animal doesn't have to be "intentionally abandoned" to be covered under Section 10.1. SPC Mead suggested that there are many different ways that an animal can fall under the abandoned category. For example, if someone is admitted to hospital under the *Mental Health Act* or has been arrested and can't retrieve their animal, that animal could be considered abandoned under

the PCAA. The third-party surrender by the Shelter allowed the Society to take Daisy into custody and to have her seen by a veterinarian.

77. SPC Mead testified that Daisy was seen by Dr. Emma Peterson of Van Isle Veterinary, on July 11, 2023. The only concern noted by Dr. Peterson at that time was a fractured tooth. Examination by the Society's intake staff also noted Daisy's fractured tooth with some presence of dried blood.
78. SPC Mead returned a call from the Appellant on July 10, 2023. She advised him that he was under investigation for animal cruelty and read him his rights from memory, which he said he understood. When SPC Mead asked him to tell her what had happened that day, the Appellant again said that he wanted to know when he could pick Daisy up. When SPC Mead told him that Daisy had been taken into custody by the Society and was no longer at the Shelter, the Appellant became very upset and was unable to continue the conversation. R.N. came on the line, apologized for the Appellant - whom he said was upset because he loved his dog and wanted her back- and described the incident as an unfortunate accident.
79. SPC Mead asked R.N. what the Appellant had told him regarding the incident. R.N. said that he understood that the Appellant and Daisy had been playing around some water – perhaps a sprinkler – and that Daisy was wet and had slipped out of the Appellant's hands. SPC Mead told him that while she could not reveal any confidential details, that version of events was not what had been captured on video camera. SPC Mead explained the Notice of Disposition and dispute instructions and R.N. gave SPC Mead his email address to receive the documents on the Appellant's behalf.
80. SPC Mead testified that she spoke to Shelter staff again on July 18, 2023 to request more detailed statements from the staff. The Shelter manager said she would canvass staff and residents to see who was willing to provide further comments and would get back to her. The staff member who witnessed the Incident subsequently called SPC Mead on July 20, 2023 to say the Appellant would lift Daisy up by her front paws and dangle her without support and that he would also write on Daisy's stomach.
81. On August 16, 2023 SPC Mead returned to the Shelter and took recorded statements from five residents. SPC Mead said she was surprised to hear of so many incidents in just two weeks' time (Appellant's length of stay at the Shelter). When the Society asked what stood out for her in these statements, Mead said 4 of the 5 statements mentioned the Appellant holding Daisy up by the tail such that she was off the ground without any further support. One or two of the witnesses said the Appellant claimed he was stretching her back and it was good for her. One of the residents who was involved in the Incident teared up. Another witness noted how the Appellant said Daisy was his therapy dog and when he was upset, he would scream "bring me my dog" and then hug her to his chest very tightly.

82. On August 2, 2023, SPC Mead received a call from RCMP Constable Fay enquiring as to the status of the Society's file as the Appellant had a court date coming up on the criminal charges associated with the Incident. SPC Mead advised the constable that the Society was planning to submit an animal cruelty charge to Crown Counsel.
83. SPC Mead provided an update as to Daisy's current status by way of a summary of an email from Daisy's foster placement as follows:
- When they brought her home, Daisy presented as very timid, shaking when being handled - especially when being leashed. They described her as stressed and whining. She would lower her head and shrink back when they bent down to pet her. She was put on Metacam for pain control for her fractured tooth. She was scared to put her head down and eat out of a bowl so was fed from a plate instead, which she was happier with. Her diet includes rice and cooked fresh meats, and her appetite has improved and she's now comfortable eating from a wide bowl. Daisy's shaking and timidity has stopped. She likes being in a routine where she knows what to expect. She wasn't house trained, but now is reliably using pee pads and will ask to go out. She likes to go out very last thing at night and very first thing in the morning. That way she stays clean, which has also contributed to her self-confidence. There's no more trembling and she enjoys being petted. She will jump up onto the sofa beside her foster parents, settle down for the evening and actually relax and go to sleep instead of sitting up and being watchful. Now she's enjoying going for walks and will walk ahead of her foster parents instead of hanging back.
84. Under cross-examination by the Appellant, SPC Mead agreed that the veterinarian had been unable to determine when the fracture to Daisy's tooth occurred. The Appellant asked SPC Mead why there had been such a long delay between the written witness statements (July 8-9) and when she interviewed witnesses and obtained audio recordings (Aug 16), and whether she believed things could be misinterpreted over such a long-time span. SPC Mead said she could not comment on that possibility.
85. With respect to the August 16, 2023 interviews of the other residents at the Shelter, SPC Mead testified that Society staff contacted the new Shelter manager and explained that the Society would like to get more details about the incidents described in the handwritten witness accounts that were provided to SPC Mead on July 10, 2023, and asked if the manager could provide a list of residents who were willing to be interviewed. The manager replied that there were multiple people who wanted to be interviewed, and the Society staff passed the information to SPC Mead, who then conducted the interviews, individually and in a closed room, with the five residents on August 16, 2023. SPC Mead testified that she found the witnesses that she interviewed credible and noted that a few also had positive things to say about the Appellant.

86. The Appellant noted that a lot of background noise could be heard in the recordings and asked SPC Mead if the door to the room had been closed during each interview such that the interviewees could not hear each others evidence. Mead replied that it had.

Dr. Ken Langelier, DVM

87. The Society called Dr. Ken Langelier, DVM as an expert witness in veterinary medicine. Dr. Langelier is a Doctor of Veterinary Medicine, graduating from Western University, and has specialized in the care of small animals, wildlife and exotic pets in Nanaimo for the last 41 years. He is a recipient of Order of BC, the BCSPCA Veterinarian of the Year Award, the Canadian Veterinary Medical Association's Animal Welfare Award and the BC Veterinary Medicine Association's Veterinarian of the Year Award. Based on his credentials and experience Dr. Langelier was accepted as an expert witness by the Panel.
88. Dr. Langelier testified that he had not examined Daisy but had reviewed Dr. Peterson's (DVM) clinical records when Daisy was brought to her clinic by the Society, including x-rays and photographs of her fractured tooth. He had also viewed the surveillance videotape of the Incident, and provided an August 24, 2023 report to the Society.
89. Dr. Langelier reviewed the evidence presented in his report. He explained that dachshunds, because of their long backs, have vulnerable spinal columns that make them, as a breed, particularly susceptible to disc disease which requires their owners to be particularly protective of their backs. He said that when disc disease occurs and puts pressure on the spinal cord, it creates one of the most intense pains that vets see in their practice because it puts pressure right on the nerve tissue itself. Disc disease causes inflammation, inflammation causes degeneration of the disc material or the ligaments around it and weakens or calcifies it, making them prone to rupturing. This process can become so bad that it can cause paralysis that must be surgically repaired.
90. Upon viewing the video of the Incident, Dr. Langelier's concerns related to the medical risk to Daisy arising from the twisting and turning as she was thrown through the air, noting that the "football type" throw would have applied enough force to cause spinal injury. He testified that he did not see this trauma evident from the x-rays, but that he was concerned that the trauma Daisy underwent may have caused an injury that will manifest itself as she gets older.
91. Dr Langelier testified that,
- "...when I saw the video, I saw her not only being thrown with [such] force that even upon leaving his hands the spine was turning, then it hit the fellow's shoulder where again there would be the impact but also twisting of the spine as the dog twirled and... landed right on its head and neck area which is all again covered with disks. And then again the force of actually hitting the ground and the door..."

92. The witness statements which included references to instances in which the Appellant would drop Daisy to the floor rather than putting her down were reviewed with Dr. Langelier and he noted that he generally cautioned his clients who were dachshund owners to have stairs in their house going up to the couch or their bed and not to let their dachshunds jump more than a foot up or down to avoid chronic impacts. Dr. Langelier noted that disc disease is cumulative, reflecting the impact of a series of events over time.
93. With respect to Daisy's fractured tooth, Dr. Langelier noted that the tooth in question is a main chewing tooth and prone to cracks; the problem arises when the pulp is exposed. Owners often do not notice this because dogs hide pain. A root canal is preferred, but extraction is the most common route taken by pet owners. Dr. Langelier was of the opinion that the tooth may have fractured before the Incident – noting unless it was examined before and after the Incident it is difficult to say - but noted that it required prompt attention because the opening to the pulp canal allowed bacteria in that could cause an infection, which could cause pain. Untreated, this infection could move throughout the body, impacting the kidneys, heart and other organs. Dr. Langelier noted that Daisy also had some periodontal disease with a lot of calculus built up on each tooth. If that amount of periodontal disease was left untreated, the dog could lose other teeth. Dr. Langelier estimated it would cost approximately \$1,800 to deal with the cracked tooth and periodontal disease.
94. Dr. Langelier observed that Daisy's liver was slightly enlarged. Blood tests would be required to understand the reasons for this, but her liver enlargement made Daisy more vulnerable to liver fracture during the Incident. There was no sign of liver fracture, and Dr. Langelier was of the opinion that Daisy's liver enlargement was not the result of the Incident
95. Dr. Langelier testified with respect to the emotional trauma the Incident would have caused to Daisy. He said that being thrown would have been very emotionally upsetting to Daisy. Explaining that dogs lack the facial muscles to show pain and anxiety the way humans can, Dr. Langelier said that when dogs are in distress their facial muscles tighten around their eyes (appearing wide eyed) and their ears lay back. He observed Daisy exhibiting both indicators of distress in the video. He said a caregiver being so angry would be very upsetting to a dog. Dogs have memories like we do, and we frequently underestimate how perceptive they are of events occurring around them. They feed off their owner's energy, and when their environment is emotionally charged they can get very anxious. If the primary caregiver is very upset, sad or angry, if they are slamming doors and yelling for example - hearing or experiencing this would cause the pet to be very anxious.
96. Dr. Langelier stated that Daisy's proclivity towards shaking as described by the Appellant and other witnesses was the way that dogs show anxiety – particularly smaller dogs. Shaking is a nervous or scared reaction. Dogs are pack animals, and they are used to the members of the pack being around them. If they are out

of their environment or if strangers approach, it brings a level of anxiety that will cause them to shake.

97. With respect to Daisy's role as an emotional support animal, Dr. Langelier noted that there was a good possibility that Daisy played that role for the Appellant, but that the dog also has to be emotionally stable to provide that support and that to do so, the dog also must be in an emotionally stable environment. He said that while he was very aware of the emotional stability a support pet can provide and wished all who needed them could have one, you have to think of the pet's emotional health as well. Their safety and well-being have to be taken into consideration. They should be comfortable - with their food, water, shelter and human interaction – so that they are not going through anxiety in those environments. Dr. Langelier noted that unfortunately pet owners who seek to rely on their pets as emotional support animals are not required to undertake any corresponding training in that regard.
98. Under cross examination, Dr. Langelier testified that 'non-anesthesia' cleaning would not be effective for Daisy as it would not get to disease beneath the gum line. Dr. Langelier noted that prior to anesthesia they would test Daisy's liver and possibly more information would emerge but at this point the liver is just slightly enlarged and that could be from a number of factors. Dr. Langelier further noted that the surgery should occur within the next few weeks and in the interim Daisy should be on antibiotics and pain relief medication.
99. Dr. Langelier explained the difference between a service dog, a therapy dog and an emotional support dog. A service dog usually is specially trained – for example a guide dog for the blind– but there is no real definition of an emotional support dog. A therapy dog is used more as a general term to describe everything from a guide dog through an emotional support dog to a seizure detecting dog. Dr. Langelier noted that it's hard to say whether a pet is truly an emotional support animal without the input of the owner's psychiatrist.
100. With respect to the evidence from residents at the Shelter to the effect that the Appellant would sometimes lift Daisy by her tail without other support, Dr. Langelier noted that the tail is an extension of the spine and that holding a dog by its tail would be stressful to the dog and could also cause a tail fracture resulting in significant pain and potentially paralysis.

Closing Statements

Appellant

101. In his closing statement, the Appellant said that he feels he can provide Daisy with the support that she needs. He is able to pay for the oral surgery she needs and wants to get her back into a routine where she has her "daddy" and her toys and her bed and her treats. He noted that he had picked her out as a puppy from the

breeder and has cared for her for almost 8 years. He said that Daisy has always been there for him and he wants to be there for her. He stated that he knows that he messed up this summer and that he will do anything in his power to make sure she is comfortable and happy for the rest of her life.

102. With respect to the abandonment, the Appellant said that the Incident happened on a Friday and that he called the Shelter on Saturday morning and numerous times over the weekend to get Daisy back and never intended to abandon her. He noted that it was his mental health struggles that caused the problems and that he was willing to accept any conditions put on Daisy's return, including medication checks, having psychiatric reports provided every 2 to 4 weeks (when he meets with his psychiatrist) or having R.N. adopt her if she could not be returned to him.
103. He testified that Daisy is the best thing that ever happened to him, that he really needs her in his life and that he wants to show her the life she had before he hurt and disrespected her. He wants to treat her with love. The Appellant apologized to the Society, to BCFIRB, and to SPC Mead for his behaviour and actions during the last few months, saying he was aware that some of the ways he has tried to reach out in text messages and emails were inappropriate. He explained that he just missed his "baby girl", that he knew the hearing was about what was best for her, that he hoped he will get her back and that he really did not mean to abandon her.
104. With respect to costs, the Appellant said that he had set aside money to pay the Society for its costs and to provide Daisy with the medication and oral surgery that she needs.

Society

105. The Society first summarized the \$1,016.90 in costs that they are seeking, asking that these be paid in full prior to Daisy's release if an order to return Daisy is made by the Panel, and that at minimum the Society's veterinary costs should be covered.
106. With respect to the issue of abandonment, the Society agreed that it may be the case that the Appellant did not intentionally abandon Daisy. However, in throwing her he put her into the hands of someone who took her into the Shelter to keep her safe, and that because the Appellant was banned from the Shelter and the people in the Shelter were not able to care for her she was technically a stray and as such was properly third-party surrendered to the Society under the PCAA. The Society noted that the "subjective intentions of Daisy's owner are not relevant to the assessment of whether or not an animal has been abandoned", as has been found by previous BCFIRB Panels in the past.

107. With respect to Daisy's return, the Society argued that the factors that must be considered are how it would ultimately impact Daisy if she were returned and not how it would impact the Appellant if she were not returned, adding that the main concern for the Society was the severity of this incident and the potential for violence in the future.
108. The Society noted that the Appellant claimed to have "blacked out" during the Incident but that no medical evidence was offered in this regard. The fact that the Appellant remembered much of the Incident undermined his contention that he had "blacked out".
109. The evidence that the Appellant has difficulty controlling his temper and does things that he regrets was noted by the Society with respect to the possibility of future incidents. The Society made the analogy to the reaction that would follow from the throwing of a human child and suggested that a dog should be regarded no differently. After the Incident, the Appellant was seen to be in a rage and shaking. Several days after the Incident, when speaking to SPC Mead, the Appellant began yelling and R.N. had to step in and speak in his behalf.
110. The Society referenced common themes in the written and audio statements provided by witnesses that the Appellant held Daisy by the tail, squeezed her like a teddy bear and had difficulty controlling his temper.
111. The Society stated that the testimony of Dr. Langelier was particularly helpful, noting the risk the Incident posed for Daisy's physical and emotional health, and how an emotional support dog needs to be in an emotionally stable and supportive environment. The Society suggested that the Appellant was using his mental health issues as an excuse for bad behaviour and that there was no real evidence, from his new psychiatrist or anyone else besides the Appellant, that his new medications would make a difference in his behaviour.
112. With respect to Daisy's shaking, the Society noted that since she has been in a supportive foster care environment, her shaking has stopped. Taking her out of that environment and returning her to an environment that has proven to be unstable would do a disservice to Daisy. The Society submitted that the question is,
 "...not whether or not [the Appellant] should have Daisy back because it benefits him. The question here today is whether or not Daisy should be given back to [the Appellant] because it's in her best interest. In my view, the evidence that's been provided today and the evidence of [the Appellant's] actions since July are a strong indicator that Daisy's best interests are not served by a return to [the Appellant]. The Society should be permitted to keep Daisy and re-home her to the supportive and caring family where she can get the care and love she needs..."

Appellant

113. In his reply, the Appellant noted that the Society kept noting that he had been charged on July 7, 2023 with animal cruelty and disturbance of the peace when in fact those charges had been dropped by the RCMP. The Society agreed that the charges had been dropped after the RCMP spoke with the Shelter and a decision was taken that Daisy's cruelty charge recommendation would be transferred to SPC Mead to bring forward.
114. The Appellant concluded that he knew he had to provide Daisy with a stable home – that Daisy has known him for almost 8 years, and with his friend R.N.'s support, the medications he is now on, and the support of his new doctor and care team he felt he could provide the stable outcome she needed. He again noted that he was willing to accept any conditions for Daisy's return and that his friend R.N. was willing to sign any paperwork to make things work.

The Hearing of this Appeal

G. Analysis and Decision

115. Part 2.1 of the PCAA establishes the standards of care for animals and establishes a duty on those responsible for the animal 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.
116. 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.

117. Section 10.1 of the PCAA, deals with abandoned animals and reads as follows:

Abandoned animals

- 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
- (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.

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

ANALYSIS – ABANDONMENT

119. Abandonment under Section 10.1 of the Act was recently discussed by this Tribunal in *G.G. v. BCSPCA (August 24, 2022)*. In that case, the Tribunal relied upon *HL v BCSPCA (June 1, 2015)*, which explained that "abandonment" under the Act is determined objectively, and the owner's intention to abandon is irrelevant to the determination. As noted by the Panel in *G.G.*:

[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 animal. 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(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(1) of the Act and third-party surrendered to the SPCA under Section 10.1(2) of the Act.

120. The Panel finds, on the balance of the evidence, that the Society was justified in taking custody of Daisy as a Third-Party Surrender under Section 10.1 of the PCAA. While the Appellant did not intentionally abandon Daisy, the intent to abandon is not required under Section 10.1 of the PCAA. The Appellant was in jail, Daisy had been taken into protective custody by the Shelter, the Appellant was banned from the Shelter, and the Shelter was unable to care for her. Daisy was effectively abandoned.
121. On a procedural level, the Appellant argued that until he received the “trespass letter” on Tuesday, July 11, 2023 (not filed in evidence but presumed by the Panel to be the notice from the Shelter that the “weekend ban” imposed Friday prior to the Incident was now a permanent prohibition), the “abandonment” on July 10, 2023 was not in fact an abandonment because the Appellant was still a legal Resident at the time and the Shelter was not allowed keep resident’s pets. This argument presumes that the Shelter’s ability to ban the Appellant from the property was somehow contingent on a written notice being provided to the Appellant in that regard, and the Panel notes that no evidence was in fact led in support of this argument.
122. In the Appellant’s cross-examination of SPC Mead, she noted that she had been made aware of the “trespass letter” on Sunday, July 9, 2023 when she contacted the Shelter. The Appellant should, in fairness, have been told as soon as the trespass letter was created that he had been banned from the Shelter and that Daisy was to be surrendered to the Society. Instead, when he called to ask when he could pick up Daisy, he was told by the Shelter that they had to wait for the manager to come in on Monday to make a decision and subsequently that they were waiting for a decision from the Society. However, regardless of his residency

status, the Appellant's right to reclaim Daisy from the Shelter, as one normally would in an instance where a pet is left behind at the end of a tenancy, was extinguished when the RCMP arrested him and Daisy's presence at the Shelter became one of temporary protective custody.

123. A second procedural argument was raised by the Appellant with respect to the time allowed to him to prepare and file his initial request for Daisy's return. While there were issues with respect to the timing allowed for his review submissions those issues were largely the result of the Appellant's own failure to provide the correct email address to the Society and in any event those potential procedural fairness issues have been fully remedied by this appeal which has provided the Appellant a full and open hearing process.
124. The Panel further finds, based on the surveillance video of the Incident and the expert evidence of Dr. Langelier, that Daisy, in addition to having been abandoned under the PCAA, also met the definition of distress under the PCAA as a result of the Incident. In the surveillance video of the Incident, the Appellant is seen shifting his weight to his back foot, hoisting Daisy in the air and throwing her like a football, over a distance of approximately 9 feet, at the two men who were standing at the gate. Dr. Langelier noted that this abusive act would have caused Daisy great emotional and physical distress and that the emotional distress would have continued after the Incident.
125. The Panel is satisfied, on the balance of the evidence, that Daisy met the definitions of both "abandoned" and "in distress" under the PCAA at the time of the Incident, and was appropriately taken into protective custody, first by the Shelter and then through third-party surrender by the Society.

ANALYSIS – RETURN

126. Having determined that Daisy was properly taken into the care of the Society, the next issue to be decided by the Panel is whether it would be in the best interests of Daisy to be returned to the Appellant.
127. The Panel accepts the Appellant's evidence that he had no intention of hurting Daisy during the Incident. Prior to the Incident, the Appellant had a heated argument with other residents of the Shelter and was temporarily banned from the Shelter for his outbursts. The Appellant has a history of mental health struggles and was obviously going through a problematic time in his life. As his level of personal stress increased, he lashed out in what he described as a "black -out seizure" (which the Panel took to mean more of a blind rage than an inability to recall events) at the residents that he perceived to have wronged him. The Appellant was clearly not thinking or acting rationally at the time of the Incident.
128. There is no question but that the Appellant loves his dog and, when not in the grips of his mental health struggles, appears to treat her well. Aside from some dental

disease Daisy presented as physically healthy and was up to date in her vaccinations. However, as attested to by the Appellant, his witnesses and his medical support professionals, the Appellant treats Daisy as his emotional support dog. Given the Appellant's mental health issues, quick temper, agitation and propensity for anger and shouting, this role in his life has proven very stressful, and ultimately dangerous, for Daisy.

129. The Appellant's anger management issues trace back to his childhood, when he was diagnosed with bi-polar disorder and ADHD. According to his 2006 psychiatric assessment, undertaken just after he graduated from high school and submitted as evidence by the Appellant, Dr. Garth Stewart observed,

“...He is probably quick tempered and has a tendency to display anger through physical means. This likely takes the form of breaking objects, throwing things around and slamming doors, etc. [The Appellant] does not appear to have a high potential to engage in acts of violence against others...”

130. In his 1998 assessment, which also noted the Appellant's anger management issues, Dr. Robert Roy observed him to be courteous, respectful and cooperative, something the Panel noted during the hearing.

“In presenting our actual test results, we would first like to say that [the Appellant] proved to be a delightful and cooperative client to work with. If one speaks slowly and distinctly to him, he generally grasps all without difficulty. One must sit in front of him as he depends a fair amount on lip reading: indeed he lip reads so well that the uninitiated may not recognize this at all... “

131. The Appellant testified he was on full psychiatric medications – for both bi-polar disorder and ADHD - when he lived in Alberta and was stable. However, when he moved to BC, the bi-polar medication that he was taking in Alberta was not covered under BC's drug plan and would have cost him approximately \$200 a month. According to the Appellant, his BC physician decided to take an “environmental factors” approach to control his bi-polar and ADHD symptoms, weaning him off all medications except for an anti-depressant and his AIDS medication.

132. The Appellant told the Society on cross-examination that he realized, as his stress levels accelerated over the spring of 2023, that he needed to go back on his psychiatric medication. The Appellant said he spent a month trying to get his doctor to prescribe the medication and when the doctor returned from a two week holiday at the end of June, he agreed, putting the Appellant back on psychiatric medications after a short delay to obtain government approval for one of the drugs under provincial medical coverage. Ironically, the Appellant's new prescription commenced on July 7, 2023, which was the day of the Incident.

133. The Appellant told the Society that he found the Shelter difficult and stressful because there were a lot of drug users – he said that he did not drink or use drugs - and cliques. He testified that he began leaving Daisy at R.N.'s during the day while looking for a place to rent and – facilitated through the John Howard Society

- had paid another Resident an \$800 deposit for what was to be shared accommodation. When the other resident abruptly backed out via text message and was not able to return his deposit, the Appellant became angry. And when that Resident and a friend taunted him while they were standing at the gate to the Shelter and wouldn't answer his questions about the return of his money, he lost his temper.
134. Statements of Shelter residents collected by the Shelter manager the weekend of the Incident (in writing) and some five weeks later by SPC Mead (audio recordings) raise further concerns about the way the Appellant interacted with Daisy on a day-to-day basis. Although these statements have not been tested in cross examination, enough common themes emerged in the 5 written and 5 recorded statements for the Panel put some weight on them. According to Shelter residents, the Appellant carried Daisy most of the time and instead of putting her down gently after holding her, he would drop her to the floor from waist height, causing her to sometimes yelp. Most observed the Appellant picking up Daisy by the tail and holding her off the ground without support, claiming it was good for her back. Residents referred to the Appellant's quick temper, one noting that he would scream for his dog when anxious and squeeze her tightly to him like a teddy bear. Daisy was frequently observed shaking and trembling, and would hide under the table and bed.
135. The reports of Daisy's persistent shaking were of concern to the Panel. As explained by Dr. Langelier, dogs are basically pack animals. They build strong bonds with their owners – even when subject to abuse - and take on their owner's feelings and emotions. When an owner is stressed or angry or sad, the dog absorbs that stress and shaking is one of the symptoms. All dogs need a stable environment and must rely on their owners to provide that environment. This is particularly true for emotional support dogs. Dr. Langelier believed that Daisy provided emotional support to the Appellant, but the Appellant's inability to manage his mental health and control his anger meant that Daisy was in an unstable environment herself and would have experienced ongoing stress and anxiety. Her shaking was a symptom of this instability.
136. One can only imagine what Daisy thought as she found herself flying, twisting and turning through the air, after being violently thrown by her owner for a distance of nine feet at two men standing in front of the Shelter gate. The physical shock of hitting the man, then the metal gate, then the concrete below would have increased her emotional distress, pain and suffering. The immediate distress arising from the Incident for Daisy is obvious and was not contested by the Appellant.
137. According to Dr Langelier, dog's have long memories, and the memory of having experienced such dramatic emotional and physical trauma at the hands of her owner would add additional stress to Daisy's life. The Panel took this to mean that Daisy would worry that a similar incident could happen to her again if her owner

became agitated, something which, as the Appellant acknowledged, has occurred frequently in his life due to his mental health struggles.

138. The Panel accepts Dr. Langelier's evidence as to the long-term effects of the Incident on Daisy, and shares the concern that even if the Appellant avoids a similar incident in the future, any instance in which he becomes agitated will trigger significant anxiety in Daisy. While it is true that the Appellant is now back on psychiatric medications, no evidence was presented from his new psychiatrist that she will, through medication, be able to successfully stabilize his symptoms, improve his ability to control his temper and reduce his stress levels. Without such assurances, the Panel has little evidence to find that the Appellant will be able to maintain part time work and afford to live on his own.
139. The Panel recognizes that the Appellant loves Daisy and that it is in his best interest to have her returned to him. However, weighing all of the evidence before it, the Panel cannot find that a return to the Appellant is in Daisy's best interest. As noted, the Panel put significant weight on the testimony from both the Appellant and other witnesses that Daisy trembled and shook a lot. The Panel further found it significant that Daisy's foster owners reported that her shaking and timidity stopped after she was with them for a while, and that she had relaxed and become more confident in their care.
140. Although not registered as such, Daisy has faithfully functioned as an emotional support animal to the Appellant for almost eight years. While the Panel is of the opinion that the Incident was the result of a combination of factors relating to the Appellant's mental health and not an intentional act of animal cruelty, it is now imprinted on Daisy's memory, exacerbating her stress levels when her owner is under stress.
141. The Panel finds that this Incident was the result of a mental health crisis provoked by many factors, some of which were in the Appellant's control and some of which were not. The evidence shows that the Appellant, when not in the grips of his mental health struggles, took reasonably good care of Daisy. He's had Daisy since she was a pup and provided full veterinary records of her care. She was in good physical health and all her shots were up to date. She had toys and regular physical affection. She was loved by an owner who would not intentionally be cruel to her, although the care that he provided sometimes fell short. The day-to-day acts which Dr. Langelier said caused her distress – e.g. the "game" where the Appellant held her by her tail to strengthen her spine – arose from ignorance on the part of the Appellant, not cruelty.
142. However, like the bell that cannot be unringed, the resonance of that Incident will now impact both of them. For Daisy, it is time to retire from her role as the Appellant's emotional support dog and move on to her forever home where she will hopefully receive the love and support she needs to heal and trust again. For the Appellant, with a new psychiatrist and back on full medications for the first time

since moving to BC, the challenge will be to remain on his medications and work with his psychiatrist to control his anger, manage his emotions and get to a place of mental stability where he might again consider introducing a dog into his life to provide the benefits of human-animal companionship characterized by two-way support, love and trust.

143. In consideration of all of the evidence presented to it, this Panel finds that it is in Daisy's interest to remain with the Society, with the hope and expectation that she can be adopted by a new owner who can offer her a stress-free environment and the love and support that she deserves.

Costs

144. 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.

145. 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)".

146. The Society is seeking costs as follows:

(a) Veterinary costs:	\$458.16
(b) SPCA time attending to seizure:	\$54.78
(c) Housing, feeding and caring for Daisy	\$503.15
(d) Total:	\$1,016.09

147. 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 Daisy. The calculation of these estimates has been reviewed and supported in previous appeals.
148. In consideration of the Appellant's limited income and evidence presented by the Society that they are seeking "at least" veterinary costs, the Panel finds the reimbursement of \$458.16 in costs by the Appellant is reasonable in the circumstances.

H. Order

149. The Appellant is ordered to pay costs to the Society in the amount of \$458.16.
150. The Society is permitted to keep Daisy and, in its discretion destroy, sell or otherwise dispose of Daisy.

Dated at Victoria, British Columbia this 12th day of September 2023.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Wendy Holm, Presiding Member

Appendix “A”

Exhibit #	Date (Received)	Received from	Document
Exhibit #1	July 25, 2023	BCSPCA	D. B. Decision Letter – July 25, 2023
Exhibit #2	July 28, 2023	Appellant	D. B. – NOA
Exhibit #3	July 28, 2023	BCFIRB	2023 July 28 - D. B. v BCSPCA P2309 - NOA Process letter
Exhibit #4	Aug 8, 2023	BCSPCA	D. B. v BCSPCA – Witness List
Exhibit #5	Aug 8, 2023	BCSPCA	D. B. Document Disclosure - Tabs 1-23
Exhibit #6	Aug 8, 2023	BCSPCA	Tab 17 - 365414_ incident video file - July 7_ 2023
Exhibit #7	Aug 16, 2023	Appellant	D. B. appeal evidence package 1
Exhibit #8	Aug 16, 2023	Appellant	Daisys court notes
Exhibit #9	Aug 16, 2023	Appellant	Appeal Contact Form
Exhibit #10	Aug 18, 2023	BCSPCA	BCSPCA Submissions - D. B.
Exhibit #11	Aug 18, 2023	BCSPCA	Affidavit 1 of Marcie Moriarty
Exhibit #12	Aug 18, 2023	BCSPCA	R. v. Schafer
Exhibit #13	Aug 18, 2023	BCSPCA	Daisy, Letter from Dr Peterson
Exhibit #14	Aug 18, 2023	BCSPCA	PCAA Witness Contact Form – SPC Mead
Exhibit #15	Aug 18, 2023	BCSPCA	PCAA Expert Witness Handout and Form – Dr. Peterson
Exhibit #16	Aug 18, 2023	BCSPCA	Witness Audio Statement_Aug 16-23
Exhibit #17	Aug 23, 2023	Appellant	D. B. v. SPCA statement
Exhibit #18	Aug 23, 2023	BCSPCA	Video, 23-9536_STMT_WIT_STREBEL, Molly

Exhibit #	Date (Received)	Received from	Document
Exhibit #19	Aug 23, 2023	BCSPCA	23-9536_Cst. FAY Police Notes
Exhibit #20	Aug 23, 2023	BCSPCA	23-9536_Occurence Narrative
Exhibit #21	Aug 24, 2023	BCSPCA	Dachshund being thrown BCSPCA