

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:

TODD LEDUC

APPELLANT

AND:

BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS

RESPONDENT

DECISION

APPEARANCES:

For the British Columbia Farm Industry
Review Board:

Dennis Lapierre, Presiding Member
Jane Pritchard, Member

For the Appellant:

Stephanie McLeod

For the Respondent:

Andrea Greenwood, Counsel

Date of Hearing:

September 12, 2023

Location of Hearing:

Teleconference

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 seizure of one dog (12 Gauge) belonging to the Appellant, Todd Leduc, at his residence located in Port Coquitlam, BC (the Property).
2. The Appellant is appealing the August 11, 2023, review decision (the Review Decision) to not return 12 Gauge 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 12 Gauge. The Appellant in this case is seeking the return of 12 Gauge.
4. On September 12, 2023, a BCFIRB hearing panel (the Panel) held a hearing via Teleconference. The hearing was recorded.
5. The Appellant represented himself with the assistance of an advocate, Stephanie McLeod, and gave evidence on his own behalf. Ms. McLeod participated in the hearing both as an advocate and as a witness for the Appellant. Ms. McLeod's role as an advocate at the hearing was not opposed by the Society and was allowed by the Panel. No other witnesses were called by the Appellant.
6. The Society was represented by counsel and called one witness, Special Provincial Constable (SPC) Sandra Windover.

B. Decision Summary

7. The Appellant identifies as a resident of Surrey, British Columbia who has lived a largely homeless lifestyle since 2018 but currently resides with his friend, Stephanie McLeod (Ms. McLeod) at the Property. He is the owner of 12 Gauge, a young Rhodesian Ridgeback type of dog.
8. This decision relates to a June 25, 2023 incident captured on video by a security camera situated at the front of a nearby property, which showed Mr. Leduc being suddenly pulled backwards to the ground by a dog tied to Mr. Leduc's waist via a leash. The video footage showed Mr. Leduc then reacting by striking the dog five times in the head with his hand and fist.
9. On July 24, 2023, after locating Mr. Leduc, the Society's investigating SPC, Sandra Windover, executed a search warrant at the Property and seized 12 Gauge who she confirmed was the dog shown in the video footage.

10. For the reasons set out below, the Panel has decided to return 12 Gauge to the Appellant under the following conditions:
 - The Appellant will take and successfully complete, at a minimum, basic obedience dog training lessons with 12 Gauge and will provide proof of his enrollment and attendance in obedience lessons to the Society within three months of the date of this Decision;
 - The Society will be at liberty to attend at the Property or at any other location where the Appellant resides with 12 Gauge, at any time to conduct a wellness check for 12 Gauge and the Appellant will respond in a timely and courteous manner to any enquiries made by the Society;
 - The Appellant will pay the Society's costs as outlined below prior to 12 Gauge being returned.

C. Preliminary Matters

11. The Panel verified with Ms. McLeod that, based on a written request submitted by the Appellant, she would be acting at the hearing as both his advocate and as a witness.

D. Material Admitted on this Appeal

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

E. History Leading to Seizure of 12 Gauge and the Day of Surrender

13. The Appellant's history with the Society began in June 2018 when a complainant expressed concerns regarding the welfare of a dog named "Wuppy" and its living conditions. The Society's files indicate that the Appellant and Wuppy were living in a truck after being evicted from a strata residence. The Society's attending officer issued the Appellant a notice to ensure the well-being of Wuppy however no further action was noted with respect to that notice.
14. The Appellant's next contact with the Society occurred in December 2021 and was related to the Society's response to concerns regarding 11 puppies in the care of the Appellant and another person who were living in a homeless camp at the time. The Society's records indicate that the puppies were being cared for, and the Appellant and the other person welcomed the blankets and other items the Society members offered to provide. All the puppies were reportedly spoken for, with the Appellant intending to keep one for himself.
15. A follow-up inspection report from the Society in January 2022, shows that Wuppy and two of her puppies were in good condition. The Society representative provided the Appellant with puppy food and toys. The report indicates Wuppy and

two of the puppies had been seen by a veterinarian and that the recommended spaying/neutering treatment for Wuppy and the puppies was welcomed by the Appellant. The report also indicates that the fire department's concern regarding the fire hazards in the homeless camp had been addressed.

16. The next Society report involving the Appellant was received on June 27, 2023 and sets out a complaint of a dog being struck repeatedly with a closed fist by the Appellant at a homeless shelter (the Shelter) in Coquitlam, BC. This incident occurred on June 25, 2023 on the sidewalk at the front of the Shelter and was recorded on the Shelter's CCTV security camera (the "Incident"). This Incident ultimately led to the seizure of 12 Gauge and is at the center of this appeal.
17. On July 12, 2023, SPC Windover viewed the recording and noted the following in her report:

Arrived at (the Shelter) and met with Manager [REDACTED], footage provided on USB. Viewed footage on rain city computer and noted the following;

- Camera angle from front entrance of building,
- Multiple individuals out front, two in wheelchairs and one in a mobilized scooter with a superman cap on the back,
- An adult male, bald with a beard, enters the frame with a medium/large size dog, short coat, light color with dark muzzle,
- Male stands in front of person in the scooter,
- Dog was tight to a leash around male's waist, dog pulls male to the ground,
- Male walks after the dog and proceeds to hit the dog multiple times in the face and upper body,
- Dog appears fearful with ears back and trying to pull away from man,
- Dog pulls away from the male but the male tugs at the leash and walks towards the dog,
- The dog was crouched down, tail tucked, ears back,
- The male grabbed the dog under the head with both hands and lifts dog off ground, both dogs front paws off the ground and resting on the males upper body,
- Male holds the dog like this for several seconds and then releases the dog,
- The dog runs to the end of the leash, away from the male and off camera,
- The male approaches the individual in the scooter, pulls the dog back into the camera,
- The dog was reluctant to move and the male steps towards the dog and makes an aggressive step towards the dog,
- The video continues and the dog stays at the end of leash, ears back, tail tucked and low, yawning, lip licking and appears terrified of the male.

I confirmed with [REDACTED] that the male in the scooter is a tenant; [REDACTED] and the male in with the dog is his brother; Todd LEDUC. [REDACTED] resides in [REDACTED] and Todd LEDUC visits the building multiple times per week to visit [REDACTED]. Todd will spend hours in the suite with [REDACTED] or they have a visit outside, Todd always has his dog with him.

I explained that based on the evidence in the footage, we would seek further legal action and inquired if the staff would contact us if and when Todd shows up. Staff and ██████████ consented. Exit 1224HR

Further Comments:

While in office, rain city staff mentioned that Todd's dog was from a litter of puppies belonging to a person named ██████████, and that ██████████ (female) had a ban from the building because her adult breeding pair of dogs were considered aggressive.'

I did not have context until I searched Todd (Norman) LEDUC in SB

18. SPC Windover's report shows that after finally locating an address for the Appellant, she executed a warrant on July 24, 2023 at the Property, accompanied by three RCMP officers. There she met 12 Gauge and the Appellant. After speaking with the Appellant and reviewing the circumstances of the Incident with him, she seized 12 Gauge.

F. Review Decision

19. On August 11, 2023, Ms. Moriarty issued the Review Decision in which she outlined her reasons for not returning 12 Gauge to the Appellant.
20. In coming to her decision, Ms. Moriarty reviewed the following:
 - File #364752 Inspection Follow-up Details (IFD) – July 24, 2023,
 - Information to Obtain Warrant (ITO) and Signed Warrant – July 24, 2023,
 - Notice of Disposition – July 24, 2023,
 - Historical File 275883 IFD – June 24, 2018,
 - Historical File 336352 IFD – January 19, 2022,
 - current status list for 12 Gauge, and
 - various email submissions from the Appellant and sent on the Appellant's behalf.
21. In her decision, Ms. Moriarty summarized the CCTV footage of the Incident, and noted that the Appellant is observed hitting 12 Gauge multiple times with both a closed and open fist which is followed by the Appellant's aggressive and rough handling of 12 Gauge. Ms. Moriarty was satisfied, based on the evidence, that SPC Windover reasonably formed the opinion that 12 Gauge was in distress, in accordance with the *PCAA*, and that her action to take custody of 12 Gauge to relieve the distress was appropriate.
22. In reference to the e-mailed submissions provided by the Appellant's advocate, Ms. McLeod, which included the Appellant's and Ms. McLeod's interpretation of the CCTV security camera footage, Ms. Moriarty took issue with several aspects of their interpretation. She noted their assertion that 12 Gauge was struck fewer times than stated, their interpretation of the effect that the Appellant's actions had on 12 Gauge (e.g., why the dog was then yawning and licking its lips), and their

claim that hitting 12 Gauge caused it no discomfort or harm, were all inaccurate. Ms. Moriarty stated that 12 Gauge was clearly suffering from fear, anxiety and panic from being struck.

23. As a result of the Appellant's mischaracterizations of the Incident and taking into account the response submissions and actions taken by Ms. McLeod following the seizure of 12 Gauge from the Appellant, Ms. Moriarty determined that if returned to the Appellant, 12 Gauge would likely be returned to a state of distress and for that reason determined that it would not be in the best interest of 12 Gauge to be returned to the Appellant.

G. Key Facts and Evidence

24. In an appeal under the *PCAA*, the Panel must determine whether the Society (a) properly exercised its authority in taking 12 Gauge into protective custody and (b) whether 12 Gauge should be returned to the Appellant.
25. Below is a summary of the relevant and material evidence presented during the hearing and the submissions made by the parties. Although the Panel has fully considered all the facts and evidence in this appeal, the Panel refers only to the facts and evidence it considers necessary to explain its findings of fact and its reasoning in this decision.

Appellant Testimony

26. The Appellant began his testimony by describing the location of the Incident, on the sidewalk outside a homeless shelter. He stated that 12 Gauge had dragged him to the ground while chasing rodents that were on the sidewalk into traffic. He was frustrated and scared and upset because of 12 Gauge's behaviour and reacted by giving the dog a couple of slaps. He admitted, emotionally, that he had overreacted and that he had made a mistake.
27. Under cross examination, he described his relationship with Ms. McLeod. He stated that they are friends and that he and 12 Gauge have been living with her since January 2023 after he had been evicted from his previously residence.
28. The Appellant explained that he had looked after 12 Gauge's mother, Wuppy, from about 2017 or 2018 while Wuppy's owner was in jail. The Appellant had 12 Gauge from the day that he was born, on November 16, 2021. The Appellant added that he has owned or looked after dogs all his life.
29. The Appellant explained that the people that he previously lived with had tried to keep 12 Gauge but he had tended to run away from them and at one point was lost for a week before being located by the Appellant. After that incident 12 Gauge would only come to him.

30. The Appellant stated that he had watched only part of the video footage of the Incident and agreed with Ms. McLeod's written statements and other submissions made on his behalf in this appeal. He noted that they had been researching and learning about positive reinforcement and different types of behaviour training methods for dogs. He stated that he had also talked on the phone with Ms. McLeod's cousin who trains superdogs and who said she was willing to work with them once 12 Gauge was returned.
31. The Appellant admitted to having had no formal dog behaviour training. He went on to describe how he housetrained a dog by simply watching it until it started to circle in the house, indicating it was preparing to poop, and then he would put it outside. He stated that he treated 12 Gauge like his best friend or one of his kids. At one point he referred to 12 Gauge as his son.
32. The Appellant described himself as having a grade 10 education and that he later gained his grade 12 while in an apprenticeship program, but that he hasn't read much since he left school. He read Ms. McLeod's submissions to the Society as best he could. In response to a Panel question about defining the term "positive reinforcement training", he described it as giving the dog treats and praise.
33. The Appellant denied having any anger issues. He stated that he's never spoken to a veterinarian, an animal trainer about dog training, or to a counsellor about anger management, but he has started looking into training information since the Incident. In describing the Incident, he explained that he was shocked when 12 Gauge, who was attached by a leash to his waist, dragged him to the ground while chasing after a rat and that his initial reaction was a mistake. He stated that until he saw the video, he wasn't aware of how severe it was. He noted that the Incident happened too fast and that he reacted out of fright, out of fear and out of panic. He admitted that it was wrong and that it should never have happened. He expressed his regret for his actions.
34. With respect to his future plans, the Appellant stated that if 12 Gauge is returned to his care then Ms. McLeod would take 12 Gauge with her when she moves to Hope, BC where she owns another residence. The Appellant would continue to reside at the Property and would get to see 12 Gauge when Ms. McLeod came to Vancouver for her frequent hospital appointments and when the Appellant went to visit Ms. McLeod in Hope. The Appellant would exercise 12 Gauge during the dog's visits with him at the Property.
35. The Appellant stated that 12 Gauge was like a son to him. He acknowledged that he made a mistake and that 12 Gauge shouldn't have been put through the Incident. He stated that the Incident was a one time thing and it had scared him and that it would never happen again if 12 Gauge was returned to his care. He further stated that he was willing to turn ownership of 12 Gauge over to Ms. McLeod if he has to.

Appellant Witnesses:

36. Ms. McLeod testified that she owns 12 Gauge's sister and has been involved with all of the puppies from that litter for months without incident. She stated that she's provided the Appellant the support that he has needed when it was needed. She noted that she helped him look for 12 Gauge when the dog was previously lost in Surrey.
37. Under cross-examination Ms. McLeod testified that while the sister of 12 Gauge is the first dog she's ever owned, she has had other pets and is generally aware of how a dog should be trained. She has had no formal dog-training instruction however she can tell the difference between well-behaved and not so well-behaved dogs and is aware that dogs need guidance. She noted that when she first got her dog she had spoken with her cousin who is a dog trainer and that her cousin had offered to help with training 12 Gauge, if he is returned.
38. Ms. McLeod stated that she treats 12 Gauge like he is one of her kids and that he is part of the family. She noted that she was with the dogs the day after they were born and that she has seen them almost every day since.
39. With respect to her previous criticism of the Society following the seizure, she agreed that she didn't really understand how bad the situation looked until she saw the video footage and, that she was upset when the Society showed up at the Property without giving notice. She noted that she had only known about the Incident from the Appellant mentioning it after it had happened and that he had felt really bad that something had happened with 12 Gauge.
40. She stated that her initial criticism was based on what the Appellant had explained to her, which turned out not to be accurate. She acknowledged that the Incident was a little bit worse than what he had described to her. Additionally, she was upset at how the Society had handled the matter, asserting that it could have been handled in a more timely and better manner.
41. She further stated that she felt that the video had been misinterpreted. She noted that at the end of the video, 12 Gauge didn't seem to be in distress, nor did he appear to be in distress through the month following until the day he was seized.
42. Ms. McLeod explained that she has homes in both Hope and in Surrey and needs to make frequent visits to the hospital. She stated that she would take responsibility for 12 Gauge, including taking responsibility for his training, and the Appellant would take responsibility for his exercise. She stated that she would leave it up to him to walk, exercise and play with the dog. She noted that she will walk with them when she can, but that she can't overexert herself.

43. Ms. McLeod stated the Appellant is emotionally invested in 12 Gauge and that he gets emotional about anything having to do with the dog. She noted that he gets frustrated like any normal person does but that she had no concerns that a similar Incident would occur in the future. She stated that she would provide the support needed and that she loves 12 Gauge. She noted that even though the Appellant is fully capable of taking care of 12 Gauge, she is willing to do whatever she needs to do to be able to bring 12 Gauge home.
44. Ms. McLeod reiterated in her closing arguments that she was willing to accept whatever the conditions are required by the Panel and to do whatever is required to get 12 Gauge back including taking training courses and behavioural courses if necessary.

Respondent Witnesses:

45. SPC Windover outlined her experience up to and including her experience as an SPC with the Society including her formal education to become a veterinary technician and her work at a veterinary clinic. As a result of her training, SPC Windover stated that she has learned to recognize fear, anxiety and stress in animals. She has worked for the Society since 2018, becoming an SPC in July 2022, and has handled multiple files with registered veterinarians. She has also worked on several files with a certified animal behaviourist.
46. SPC Windover described the procedures normally followed in her role with the Society and the steps normally taken in response to animal abuse complaints. She stated that in instances where she observed an escalation in treatment from harsh handling to abuse, then her duty as a special constable obligated her to apply for and execute a search warrant.
47. SPC Windover recounted the details of the Incident as described in her notes. She noted that the actions of the Appellant in the video and the behaviour of the dog in reaction formed her opinion that 12 Gauge was demonstrating fear and anxiety and distress. She took a copy of the video footage and on July 24, 2023 executed a warrant at the Property, where she located 12 Gauge and met and discussed the matter with the Appellant.
48. SPC Windover stated that the Appellant identified himself, stating that he was the owner of 12 Gauge and that he remembered the Incident. He told her that he only struck 12 Gauge twice and that he needed to teach the dog not to pull him to the ground. SPC Windover determined that 12 Gauge was in distress based on the abuse demonstrated in the video and the Appellant's mischaracterization of the Incident and took 12 Gauge into custody.

49. SPC Windover stated that the *PCAA* is protective in nature and that she has a duty to protect animals from situations of distress. Having determined that 12 Gauge was in distress as contemplated by the *PCAA* she was obligated to protect him from foreseeable causes of future harm.
50. SPC Windover explained that she had not issued a notice to the Appellant with respect to the Incident because the Appellant had downplayed the abuse and furthermore had claimed that he needed to escalate to striking 12 Gauge in order to train him not to chase after rodents while on a leash. The Appellant made no admission that his conduct was excessive, and that while the reaction of the dog chasing the rat was normal, the Appellant's reaction was extreme and abusive.
51. SPC Windover further stated that when she entered the Property to execute the warrant, 12 Gauge exhibited some nervousness, although he did come to her and accept a treat.
52. SPC Windover acknowledged that a veterinarian had not attended the seizure as it wasn't necessary.
53. The day after the seizure SPC Windover took 12 Gauge to a veterinarian for an examination. The examining veterinarian found that 12 Gauge exhibited no physical injuries but did appear to be a bit nervous. SPC Windover went on to explain that dogs that come into the care of the Society sometimes exhibit fear and nervousness and that those dogs are sometimes administered Trazadone which is a tranquilizer. She noted that 12 Gauge was administered Trazadone but that he is now doing great and is a very happy dog.
54. SPC Windover stated that she has difficulty believing this was the first time this type of abusive conduct had happened and that she remains concerned that the Appellant downplayed the abuse prior to the Appeal. She was also concerned that a return of 12 Gauge to the Appellant would cause further distress to the dog based on her previous experience in files involving 'abusers'.
55. SPC Windover agreed that her decision to seize 12 Gauge was in part based on the Appellant's interactions with her while she was executing the warrant, but that those interactions were in addition to what she saw in the video, the reaction of 12 Gauge in the video and the dog's timid nature during the seizure.
56. SPC Windover stated that her only concern with respect to Ms. McLeod having custody of 12 Gauge would be the Appellant's continuing role in the dog's life and specifically if he ended up residing with her again or if 12 Gauge was left in his care while Ms. McLeod was away.

H. Analysis and Decision

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

9.1 (1) A person responsible for an animal must care for the animal, including protecting the animal from circumstances that are likely to cause the animal to be in distress.

(2) A person responsible for an animal must not cause or permit the animal to be, or to continue to be, in distress.

11 If an authorized agent is of the opinion that an animal is in distress and the person responsible for the animal

(a) does not promptly take steps that will relieve its distress, or

(b) cannot be found immediately and informed of the animal's distress, the authorized agent may, in accordance with sections 13 and 14, take any action that the authorized agent considers necessary to relieve the animal's distress, including, without limitation, taking custody of the animal and arranging for food, water, shelter, care and veterinary treatment for it.

58. 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.

59. We have also proceeded on the basis that the Appellant has an onus to show that the remedy they seek (the return of 12 Gauge) is justified. The first issue to consider is whether 12 Gauge was in distress at the time of the seizure. Depending on the answer to that question, the next issue is to decide whether to return 12 Gauge or whether doing so would return 12 Gauge to a situation of distress.

Analysis - Was 12 Gauge in Distress?

60. The video recording of the Incident lasted roughly 5 minutes. The Incident started with casual interactions between 4-6 people and then showed the arrival of the Appellant and 12 Gauge who was in a harness and on a leash apparently tied to the Appellant's waist. Shortly after their arrival 12 Gauge pulled the Appellant backwards to the ground. The Appellant regained his footing and proceeded to repeatedly strike 12 Gauge for approximately 30 to 40 seconds with both an open and closed hand. 12 Gauge then backed away, cowering somewhat and remaining at the end of his leash. He continued to avoid the Appellant as best he could by

- remaining at a distance from the Appellant and then by moving behind a person in a wheelchair at the scene.
61. The definition of distress in the *PCAA* includes all instances of abuse. If an animal has been abused then it is by definition in distress even if that abuse is historical at the time of seizure. In fact, in most cases that involve the seizure of an animal for abuse, the abuse in question occurred sometime prior to the seizure and not concurrently with the seizure.
 62. As noted by the Panel in *R.H. and L.H. v. BCSPCA* (June 20, 2019) at paragraph 50:

“...the panel accepts that the dog was in distress at the time of seizure by Cst. Guest. This incident of physical abuse was relied on by the Society to obtain a warrant and seize the dog to place it in protective custody. While the dog may not have been in distress at the time of the Society’s seizure on April 30, 2019, as the dog was in a shelter, the uncontroverted evidence of physical abuse is sufficient to support a finding of distress within the meaning of s. 1(2)(c) of the *PCAA*. The panel agrees that it was appropriate for the Society to seize the dog on April 30, 2019.”
 63. While the Appellant initially downplayed the severity of his conduct during the Incident to the Society, at the hearing of this Appeal neither the Appellant nor his advocate Ms. McLeod contested that the Appellant’s response to being dragged to the ground by 12 Gauge was excessive and abusive. The Panel has no difficulty finding that 12 Gauge was abused during the Incident and was thereby in distress as defined in the *PCAA*.
 64. Furthermore, while the Panel heard no expert testimony about the degree and extent of the psychological harm experienced by 12 Gauge during and after the Incident, the Panel agrees and accepts that this was a stressful incident for 12 Gauge and that the distress experienced by the dog was not limited to just the physical abuse seen on the video recording.
 65. SPC Windover executed a warrant at the Property on July 24, 2023 upon locating both the Appellant and 12 Gauge. Having reviewed the video recording of the Incident and having determined that 12 Gauge was in distress as a result of the physical abuse documented on the recording, SPC Windover’s next step under the *PCAA* was to determine whether the owner had taken reasonable steps to alleviate the distress.
 66. As noted by the Panel in *Bagga v. BCSPCA* (January 22, 2019) at paragraph 104:

“In considering the issue of distress, the panel starts with the proposition that the definition of distress is broad and the society does not have to establish an actual deprivation or harm to an animal before determining the animal is in distress. A medical finding that an animal is injured or in pain is not required in order to conclude that an animal is in distress. Instead, an animal can be found to be in distress when an animal 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. The definition of distress is intended to be protective and preventative. It does not require proof of actual harm; rather it describes those circumstances that create a significant risk of harm to animals and should be avoided. When these circumstances are not avoided and conditions place animals at sufficient risk, the *PCAA* provides that they can be protected.”

67. SPC Windover testified that in her discussion with the Appellant, the Appellant downplayed the Incident. While he admitted to striking 12 Gauge, he claimed that he had only hit the dog twice and that he had done so in order to correct the dog’s behaviour. SPC Windover seized 12 Gauge due to the distress caused by the Incident and the Appellant’s failure to acknowledge or accept that his conduct during the Incident was abusive and had caused 12 Gauge to be in distress. While 12 Gauge was not in physical distress at the time of the seizure, the distress experienced during the Incident and the Appellant’s failure to appreciate that distress, supported the seizure of the dog by SPC Windover. The Panel finds that the seizure was properly undertaken and justified in the circumstances.
68. Having made the finding that the seizure was justified, the Panel is cognizant that there were inconsistencies and frailties in the evidence with respect to the seizure that should be noted. In particular:
 - Two Society intake forms were included into evidence by the Society both dated August 4, 2023. While both intake forms indicate 12 Gauge to be in good condition, one of the intake forms notes 12 Gauge to be friendly and healthy, while the other intake form notes 12 Gauge to be fearful and treatable/able to be rehabilitated. The inconsistency between these two forms was not explained to the Panel.
 - SPC Windover stated that she took 12 Gauge for a veterinary examination the day following the seizure (July 25, 2023), however the veterinarian examination apparently did not occur until August 4, 2023.
 - The Appellant’s advocate specifically questioned SPC Windover as to why a notice had not been issued instead of a seizure and did not receive a compelling response. The Panel remains concerned that 12 Gauge’s distress, and the potential for future distress, may have been alleviated by a process involving something less than a seizure.
 - The evidence regarding 12 Gauge’s nervousness at the time of seizure was inconsistent and not well founded. The Panel considers that 12 Gauge’s nervousness at the time of the seizure could have been caused by the seizure itself and not by any conduct of the Appellant.
69. Despite the concerns noted above, the Panel’s finding that the seizure was justified based on the abuse that occurred during the Incident and the failure of the Appellant to acknowledge and accept that he caused 12 Gauge to be in distress, requires the Panel to turn next to the question of whether 12 Gauge should be returned to the Appellant’s care.

Analysis – Return of 12 Gauge

70. In *R.H. and L.H. v SPCA* (July 2019) the seizure in that case was a result of a dog being repeatedly struck during an emotional outburst by its owner reacting to his personal circumstances. The justification for the seizure was based on witness testimony of its occurrence. On the basis of it being an apparently singular incident, the remorse shown by RH and assurances offered by RH's son (L.H.), the dog was returned to the care of L.H. who willingly took responsibility for both the dog and for monitoring his father's emotional behaviour around the dog.
71. This Panel has found that the immediate result of the Appellant's reaction to being pulled to the ground was to put 12 Gauge in distress. It was an inappropriate reactive response to the dog's action and one that justified the Society seeking the warrant and ultimately seizing the dog.
72. The Panel has also found that the Appellant, in his attempts to justify his conduct did himself no favours by understating the Incident and his recollections of his actions. Indeed, as the video depicts, the Appellant did strike 12 Gauge multiple times which resulted in the dog acting fearfully towards the Appellant. While the dog did not object to the friendly attention he then received from the individual on the video recording in the wheelchair and started wagging his tail it's unclear why the dog did so.
73. The Panel had little evidence of any ongoing psychological harm to 12 Gauge as a result of the Incident. No evidence was provided by a veterinarian or an expert in animal behaviour in that regard. SPC Windover testified as to some nervousness shown by 12 Gauge during the removal, however, as noted above, that nervousness could have just as easily been caused by the seizure itself. In any event, the limited evidence of 12 Gauge demonstrating some small measure of nervousness is not a sufficient evidentiary basis to conclude that he has or will suffer ongoing emotional harm if he was returned to the care of the Appellant.
74. The Panel finds the testimony of Ms. McLeod compelling. She noted that at the time of the Incident the Appellant confessed to her that something bad had happened and that he felt remorseful about it before the video recording emerged. The Panel finds that this volunteered confession speaks to the Appellant's sincerity, as did the way in which the Appellant began his hearing testimony, with a tearful admission and with his acknowledgment that he had made a mistake. It was, as he explained with some difficulty, a sudden and fearful reaction about which he felt bad and was sorry.
75. The Panel further notes that there is nothing in the Society's historical file as submitted in this appeal that indicates that the Appellant is anything but a caring dog owner/caretaker who has had previous respectful interactions with the Society. In previous instances in which he has had contact with Society personnel as outlined earlier in this decision, it has been to accept and welcome their

direction and help. Furthermore, 12 Gauge was examined by a vet shortly after the seizure and was described as a healthy and happy dog with no physical injuries noted from the Incident or having occurred in the interim.

76. Ms. McLeod has known the Appellant for at least several years and she owns one of 12 Gauge's sisters. She helped the Appellant to look for 12 Gauge when the dog was lost. The Appellant is a friend who has been living with Ms. McLeod since January 2023, and 12 Gauge also lives in her house, and she has stated she considers 12 Gauge to be part of her family. The Panel is confident that Ms. McLeod will continue to be a valued resource for the Appellant and an active participant in 12 Gauge's care if the dog is returned to the Appellant. Ms. McLeod stated that she would be willing to take responsibility for 12 Gauge's care and provide whatever support is needed in order for the dog to come home. Further, she stated that she would assist the Appellant by taking dog training courses if necessary.
77. The Panel finds that the Incident was a singular unfortunate occurrence and that there is little risk of 12 Gauge experiencing similar distress in the future if he is returned to the Appellant's care. Notwithstanding this finding, the Panel acknowledges that the Incident represents a serious instance of abuse and therefore has determined that 12 Gauge should be returned to the Appellant only under the conditions outlined in the Order below.

I. Costs

78. 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.

79. 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)".

80. The Society is seeking costs as follows:

(a) Veterinary costs:	\$82.00
(b) SPCA time attending to seizure:	\$68.48
(c) Housing, feeding and caring for 12 Gauge:	\$1,127.75
(d) Total:	\$1,278.23

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

J. Order

82. The dog, 12 Gauge, is to be returned to the Appellant under the following conditions:

- The Appellant will take and successfully complete, at a minimum, basic obedience dog training lessons with 12 Gauge and will provide proof of his enrollment and attendance in obedience lessons to the Society within three months of the date of this Decision;
- The Society will be at liberty to attend at the Property or at any other location where the Appellant resides with 12 Gauge, at any time to conduct a wellness check for 12 Gauge and the Appellant will respond in a timely and courteous manner to any enquiries made by the Society with respect to 12 Gauge;
- The Appellant will pay the Society's costs as outlined above prior to 12 Gauge being returned.

Dated at Victoria, British Columbia this 26th day of September 2023.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Dennis Lapierre, Presiding Member



Jane Pritchard, Member

Appendix “A”

Exhibit #	Date (Received)	Received from	Document
Exhibit #1	August 11, 2023	BCSPCA	Leduc Decision Letter – August 11, 2023
Exhibit #2	August 14, 2023	Appellant	pcaa_notice_of_appeal_form august 2023
Exhibit #3	August 16, 2023	BCFIRB	2023 Aug 16 - Leduc v BCSPCA P2310 - NOA Process letter
Exhibit #4	August 23, 2023	BCSPCA	Society Witness List
Exhibit #5	August 23, 2023	BCSPCA	BC SPCA Document Disclosure - Tabs 1-23
Exhibit #6	August 23, 2023	BCSPCA	Tab 15 – 364752 Footage
Exhibit #7	August 29, 2023	Appellant	spca response_20230727_0001
Exhibit #8	September 5, 2023	BCSPCA	BCSPCA Submissions – Leduc
Exhibit #9	September 5, 2023	BCSPCA	Affidavit 1 of Marcie Moriarty
Exhibit #10	September 5, 2023	BCSPCA	PCAA Witness Contact Form - SPC Windover
Exhibit #11	Sept 8, 2023	Appellant	Final submissions - SPCA appeal
Exhibit #12	Sept 8, 2023	Appellant	Todd's submissions