

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:

EARL BINNERSLEY

APPELLANT

AND:

BRITISH COLUMBIA SOCIETY FOR PREVENTION OF CRUELTY TO ANIMALS

RESPONDENT

DECISION

APPEARANCES:

For the British Columbia
Farm Industry Review Board:

Corey Van't Haaff, Presiding Member

For the Appellant:

Self-represented and Dave Parsons,
Agent

For the Respondent:

Christopher Rhone, Counsel

Date of Hearing:

March 27, 2013

Location of Hearing:

Teleconference

I. Overview

1. This is an appeal pursuant to s. 20.3 of the *Prevention of Cruelty to Animals Act*, R.S.B.C. 1996, c. 372 (“the *PCAA*”).
2. The appeal is from the February 28, 2014 Reasons for Decision (“Reasons”) issued by Marcie Moriarty, the Chief Investigation and Enforcement Officer of the British Columbia Society for the Prevention of Cruelty to Animals (the Society). The appeal was filed on March 3, 2014 and heard by a one-person panel in a telephone hearing on Thursday, March 27, 2014. Appellant Earl Binnersley was on the call and chose to be represented by his agent David Parsons and he had his witnesses Scott Ross and Sylvia Stewart. He also relied on the affidavits of Scott Ross, Sylvia Stewart, Teresa Binnersley, William Binnersley, and Bill Martin who were available for cross examination purposes. The Society was represented by counsel with Ms. Moriarty on the call solely as an observer. The Society relied on the affidavits of Marcie Moriarty, Tina Heary and Matthew Affleck, and Special Provincial Constable (SPC) Tina Heary was available for cross examination purposes. The Society also called veterinarian Dr. Ken Langelier, as an expert witness. The telephone hearing was recorded.

II. Brief Summary of Decision

3. Section 20.6 of the *PCAA* permits the British Columbia Farm Industry Review Board (BCFIRB), on hearing an appeal in respect of an animal, to require the Society to return the animal to its owner with or without conditions or to permit the Society in its discretion to destroy, sell or otherwise dispose of the animal.
4. For reasons that will be explained in detail later, I have dismissed the appeal and order that the dog Bandit remain in the custody of the Society, to exercise its authority under s. 20.6(b) of the *PCAA*. I am satisfied that the dog Bandit was in distress at the time it was seized. In my opinion, based on the evidence heard in this appeal, it is not in Bandit’s best interests to be returned to the appellant. If the dog Bandit was returned to the appellant, with or without conditions, I am satisfied that the dog would not be maintained in good health and that should any accident or incident or condition arise that requires veterinary care, I do not believe that the dog would receive the necessary veterinary care promptly (to relieve suffering) or at all, and it would be likely that the dog would again be found in distress.
5. Based on the evidence heard, I have concluded that the appellant would not properly care for the dog and would not protect it from circumstances likely to cause distress. As a result, I direct that the Society, in its discretion, may destroy, sell or otherwise dispose of the dog Bandit, and I note that the Society has expressed its desire to rehabilitate Bandit and re-home the dog.

III. The Society’s Powers and Duties

6. The Society under the *PCAA* is mandated to prevent and relieve animals from situations of cruelty, neglect and distress. The Society can seize animals from the care and custody of their owners or take custody of abandoned animals, as authorized by the *PCAA*. The Society’s investigation and seizure powers are set out in Part 3 of the *PCAA*, entitled “Relieving Distress in Animals”.
7. The March 20, 2013 legislative reforms, set out in Part 3.1 of the *PCAA*, state among other things that if the Society has taken an animal into custody under section s. 10.1 or 11, “an owner may request a review by the Society within the specified time limits. If a review is requested, the Society

must review the decision and must not destroy, sell or dispose of the animal during the review period unless it is returning the animal”: *PCAA*, s. 20.2(3).

8. The *PCAA* does not set out any specific process for the review. Administratively, the Society’s current process where a review is requested is to prepare a disclosure package and then to invite submissions from the owner concerning the return of the animals and to consider these submissions in light of the investigation results to determine whether it is in the animals’ best interests to be returned to their owners.
9. Sections 20.2(4) and (5) of the *PCAA* sets out the Society’s options following a review:

20.2 (4) The society, following a review, must

(a) return the animal to its owner or to the person from whom custody was taken, with or without conditions respecting

(i) the food, water, shelter, care or veterinary treatment to be provided to that animal, and

(ii) any matter that the society considers necessary to maintain the well- being of that animal, or

(b) affirm the notice that the animal will be destroyed, sold or otherwise disposed of.

(5) The society must provide to the person who requested the review

(a) written reasons for an action taken under subsection (4), and

(b) notice that an appeal may be made under section 20.3.

IV. The Appeal Provisions

10. I am guided by the approach to appeal set out in detail in *A.B. v British Columbia Society for the Prevention of Cruelty to Animals*, (August 9, 2013), which decision was upheld by the Supreme Court on judicial review¹. In summary, the right of appeal to BCFIRB gives lay people an alternative to a more formal judicial review or judicial appeal. These reforms give BCFIRB broad evidentiary hearing, investigation and inquiry powers and broad remedial powers upon hearing an appeal: ss. 20.5 and 20.6.
11. I do not think that appeals under Part 3.1 of the *PCAA* are required to be conducted as true appeals, and I do not think that BCFIRB is required to defer to decisions of the Society. In my view, the appellant has the onus to show that, based on the Society’s decision or based on new circumstances, the decision under appeal should be changed so as to justify a remedy. Where, as here, the Society has made a reasoned review decision, BCFIRB will consider and give respectful regard to those reasons.
12. However, that consideration and respect does not mean the Society has a “right to be wrong” where BCFIRB believes the decision should be changed because of a material error of fact, law or policy, or where circumstances have materially changed during the appeal period. BCFIRB can give respect to Society decisions without abdicating its statutory responsibility to provide effective appeals.
13. The clear intent of this reform legislation was to give BCFIRB, as the specialized appeal body, full authority to operate in a way that is flexible and accessible to lay persons, and to use its expertise to

¹ *BC Society for Prevention to Cruelty to Animals v. British Columbia (Farm Industry Review Board)*, 2013 BCSC 2331

ensure that decisions are made in the best interests of animals. The procedure followed by BCFIRB is a flexible approach specifically crafted to accomplish the intent of the legislation in the context of animal welfare and lay participation. This includes taking into account developments occurring since the Society's decision was made. This is entirely in accord with the inevitably fluid nature of the situation, and well within the powers granted by section 20.5 of the *PCAA*.

Decision Being Appealed

14. In the Society's February 28, 2014 Reasons, Ms. Moriarty summarized the following documents she relied on in coming to her decision: Notice of Disposition dated January 30, 2014; Information To Obtain and Warrant, various veterinary reports from Campbell River Veterinarian Hospital, Shelter Buddy file 164787, veterinary report from Dr. Langelier, various invoices and various emails and faxes from the appellant.

15. She noted in her decision that Tina Heary is an authorized agent and duly appointed SPC (and is thusly satisfied section 10 of the *PCAA*) was met, that Earl Binnersley was the owner of Bandit, that the SPC entered the property on the strength of the search warrant, that SPC Heary reasonably formed the opinion that Bandit was in distress (section 1(2), *PCAA*) and as a result of the foregoing, that SPC Heary reasonably formed the opinion that the appropriate course of action was to take Bandit into custody to relieve his distress (section 11, *PCAA*) and that the Notice of Disposition was properly served (ss. 18 and 19, *PCAA*). Therefore Ms Moriarty concluded that Bandit was properly seized according to the *PCAA*.

16. She then turned her attention toward the circumstances which lead to Bandit being taken into custody by the Society and notes, in part:

It is evident that you were aware of the significant pain that Bandit was in as a result of being hit by a car in October 2013. Specifically the veterinarian who examined Bandit on December 20, 2013 informed Teresa Binnersley that Bandit had infections in both his ears, had a dislocated hip, grade 6/6 lameness, muscle atrophy, and pain. The veterinarian stated that the dog was in pain and recommended surgery, physiotherapy, and Surolan for the ears. No medications were obtained and Bandit was removed from the vet clinic without paying for any of the services provided.

You did not seek immediate treatment for Bandit's injury after he was hit by the car and as a result, when Dr. Chappell first examined Bandit over two weeks after the injury was sustained, the only course of action to relieve Bandit of pain was surgery.

The BC SPCA made a number of attempts to follow up on Bandit's treatment and the ultimate result was that you indicated that you were not interested in obtaining further veterinary treatment. As such, a warrant was obtained and Bandit was seized.

17. Ms Moriarty, in her decision, summarized additional issues such as her concern regarding future compliance and the appellant's treatment of the RCMP and SPC Heary while on his property. She addresses the appellant's arguments that the search warrant was improperly obtained but concludes that none of the arguments would nullify the search warrant and she found that the search warrant was obtained and executed properly and that Bandit was properly removed.

18. On the issue of returning Bandit, Ms. Moriarty said:

In your statement you acknowledge that Bandit was in pain at the time of the accident and that you did not seek treatment for him right away. As you can see now from the veterinary report if you had taken

Bandit to see a professional immediately after being hit by a car you could have not only prevented Bandit from months of suffering but also saved yourself a costly surgery. I appreciate that when you finally did take Bandit in to see the veterinarian, the cost associated with providing him with the care he required would have been a shock. However at law, inability to pay is not an excuse for permitting an animal to remain in pain. You were provided with some options to seek financing and always had the option of surrendering Bandit. While you allege that Bandit was getting better and you did not feel that he was in pain, you are not a veterinarian and you had specifically been told what was required to relieve Bandit of pain. This was confirmed once Bandit was seized.

19. In her Reasons, Ms. Moriarty set out the Society's request for reasonable costs incurred pursuant to section 20 of the *PCAA* including \$2,248.87 for veterinary costs and \$365 for boarding.

Preliminary Matters

a) Issues not Addressed

20. Appeals filed under the *PCAA* are intended to be informal, flexible and accessible to parties with or without representation. During the hearing, both parties asked questions or submitted evidence that went beyond the subject matter of this appeal. A number of allegations were made regarding each side's conduct throughout this matter. The appellant accused the Society's representatives of criminal behavior. The Society accused the appellant of violent and threatening behavior. I cannot adjudicate on matters of criminality. I am required to act in the best interests of the dog Bandit and as such, did not and will not entertain argument from any party on unrelated matters. The information I relied upon in making my decision are those only related to Bandit the dog.

21. Mr. Rhone submitted a sur-reply after the final submission process had concluded and attempted to clarify earlier comments made by both parties concerning Mr. Parsons' ability to represent Mr. Binnersley. Mr. Parsons raised a further objection. I have placed no weight on either submission. I permitted Mr. Parsons to act as agent for Mr. Binnersley as that was Mr. Binnersley's choice. Any other issues between the parties can be determined elsewhere.

22. All affidavits and witness statements were entered into evidence. Mr. Parsons wished to read in all the affidavits he presented but I determined this was not necessary. He made repeated attempts to read affidavits into evidence and was stopped. For this reason I wish to expressly note that I have carefully reviewed all of the evidence and submissions referred to above even though I do not intend to refer to all of it in the course of this decision.

b) Validity of Search Warrant

23. In his submission to the Society upon its review of the decision to take Bandit into custody and before BCFIRB on this appeal, the appellant challenged the validity of the warrant. He argues that the warrant and subsequent seizure and detainment of Bandit was unlawful. He argues that the Information to Obtain a Warrant (ITO) was misleading and failed to make full disclosure. He says among other things that there was no evidence before the presiding Justice of the Peace or Provincial Court Judge that the dog was in critical or normal distress or that it was impracticable for the informant (SPC) to attend in person to obtain the warrant. The term "premises" was not defined in the warrant and he questioned whether the warrant included Mr. Binnersley's apartment at the same address. He says the suggestion that no medications had been dispensed was inaccurate as the veterinary invoice listed Surolan [an ear medication] as having been prescribed. He disputed the reliance on comments from an RCMP constable who had attended the property on January 22, 2014 to assess the dog as he is not a veterinarian and not qualified to comment.

24. Similar arguments were advanced before the Society and in her reasons, Ms. Moriarty concluded that the search warrant was properly obtained and executed.
25. I have reviewed the ITO and the circumstances under which the search warrant was obtained and executed. However, I do not see my role as a decision maker tasked with hearing appeals under section 20.3 of the PCAA as giving me the authority to review the decisions of a provincial court judge or justice of the peace as to whether circumstances justify the issuance of a warrant. A party who believes that a warrant has been improperly issued or executed can challenge that decision through judicial review and ask by way of remedy that the warrant be quashed. Until such time as a warrant has been set aside, I am entitled to rely on its validity and I choose to do so in these circumstances. I want to make it clear that I am not suggesting that BCFIRB would never consider *Charter* arguments in the context of an animal seizure that took place without a warrant or by a person who had no authority because they are not an authorized agent. However, where, as here, the warrant has been issued by a court of competent jurisdiction, the appellant's arguments all focus in one way or another on the warrant, and as I am satisfied that the warrant on its face applies to the premises in question, BCFIRB must in my view respect that court's function and must also respect that it is for the superior court, not this board, to assess the legality of a search warrant.
26. Given my conclusions on the arguments based on the search warrant, the remainder of my decision focuses on the issues of whether the dog Bandit was in distress at the time of seizure and whether Bandit should be returned to the appellant as well as the issue of costs.

Material Submitted Into Evidence

27. Appellant:
- a) March 3, 2014 notice of appeal and supporting documents. **(Exhibit A)**
 - b) March 12, 2014 submission submitted by Mr. Parsons. **(Exhibit B)**
 - c) March 24, 2014 (final reply submission) submitted by Mr. Parsons. **(Exhibit C)**
 - d) March 26, 2014 (reply to BCSPCA sur-reply) submitted by Mr. Parsons. **(Exhibit D)**
28. Respondent:
- a) Written Submissions of the BCSPCA dated March 19, 2014 **(Exhibit E)**
 - b) Affidavit #1 of, M. Affleck, sworn March 18, 2014; **(Exhibit F)**
 - c) Affidavit #1 of T. Heary, sworn March 18, 2014; **(Exhibit G)**
 - d) Affidavit #1 of M. Moriarty, sworn March 18, 2014; **(Exhibit H)**
 - e) Book of Authorities;
 - f) Expert witness form – Dr. Langelier OBC, DVM and **(Exhibit I)**
 - g) Witness form – Special Provincial Constable – Tina Heary **(Exhibit J)**
 - h) Supplemental Submission (sur-reply) of the BCSPCA dated March 25, 2014 **(Exhibit K)**
 - i) BCSPCA documents dated March 12, 2014 **(Exhibit L)**
 - j) BCSPCA documents dated February 13, 2014 (Eccles email) **(Exhibit M)**

The BC SPCA's Case

Marcie Moriarty Affidavit

29. Ms. Moriarty's affidavit dated March 18, 2014 confirmed her decision and summarized her conclusion that in order for Bandit to be emotionally content, he must first not be in a state of distress and thus requires a compassionate new owner on adoption capable of providing necessary veterinary care. She has no confidence that Bandit will be properly cared for if returned to the appellant through the provision of necessary veterinary care. She says the appellant dismissed the notion that Bandit suffered pain or disability except during the first few days post-accident and that the appellant did not secure necessary veterinary care to alleviate the pain and suffering. The appellant did nothing to assure her that he would change his negative attitude toward the opinion expressed by the veterinarians.
30. She further said she neglected to include GST in her original decision on one veterinary invoice and stated that the Society's costs are \$2,273.69 as follows: Invoice 412211 dated February 13, 2014 from Island Veterinary Hospital for \$521.11; Invoice 191285 dated February 20, 2014 from Prevost Veterinary Clinic for \$1,752.58; and BC SPCA invoice dated February 21, 2014 for boarding costs, deworming and flea control totaling \$365 for the period ending February 21, 2014. She noted that the Society continues to incur boarding costs as well as staff time and expenses travelling to and attending at the Appellant's premises to execute the search warrant. She stated that the Society waives additional sums incurred after February 21, 2014 but does retain the right to claim additional veterinary costs incurred prior to BCFIRB issuing its decision. Further, the Society does not waive its rights under section 20(2) of the *PCAA* and specifically invokes its right to payment of its costs prior to the return of Bandit, should that be ordered.

Matthew Affleck Affidavit

31. Mr. Affleck stated that he is a Special Provincial Constable (SPC) employed as an animal protection officer by the BC SPCA. In that capacity, he called and left messages for Mr. Binnersley inquiring about veterinary treatment for Bandit. On January 24, 2014 he received two calls from numbers he had left messages with: one advising him not to call again (with cursing) and one leaving a message that Bandit was fine and that the RCMP witnessed the dog running around playing. SPC Affleck tried to return this call but was unable to get the caller on the phone.
32. On January 30, 2014, SPC Affleck attended the Binnersley property with SPC Heary and the RCMP to execute the search warrant. He saw Bandit being alert and active, playing fetch but limping and lifting his back leg off the ground. He leashed the dog while SPC Heary performed a "hands-on" examination of the dog and decided to seize it. Men and women were standing around and a struggle for the leash ensued ultimately allowing the dog to escape and run off. He described a chaotic scene and stated that ultimately he leashed the dog again while in another house and then secured Bandit in the BCSPCA van. The SPC's left the property with RCMP escort at 1739 hours and drove to the Ferry terminal, arriving at the BC SPCA Parksville branch at 1935 hours, when he transported Bandit by truck to the Island Veterinary Hospital, where he left the dog. He noted he agrees with SPC Heary's decision to seize the dog.

Tina Heary Affidavit and Testimony

33. Ms. Heary is an SPC employed as a Senior Animal Protection Officer with the BC SPCA. She secured a Warrant to Search the property pursuant to the *PCAA* further to the ITO she prepared. On

January 30, 2014, SPC Heary arrived at Mr. Binnersley's property with SPC Affleck and RCMP and determined by asking Mr. Binnersley that he owned Bandit and was solely responsible for the dog. She provided him with the Search Warrant, ITO and attachments. She advised Mr. Binnersley that in addition to investigating possible offences under the *PCAA*, she was also investigating possible offences pursuant to the Canadian Criminal Code.

34. She said Mr. Binnersley admitted he did not take the dog for any veterinary care since the November 2013 visit when he was given the option to surrender the dog or have an operation performed. He said he had not gotten a second opinion, did not give Bandit any pain medication and thought the dog was okay. He acknowledged the dog's leg got caught under a moving vehicle while he was away at work. He came home the next day, after learning his dog was injured.
35. SPC Heary noted Bandit was active and mobile but limping. Once Bandit was leashed she performed a "hands-on" assessment and determined the ball of the femur was possibly out of its joint socket. Based on veterinary information and Mr. Binnersley's admissions, she determined the dog's leg remained in an injured and apparently painful state, and he was in distress. She took the dog into custody so he could receive veterinary care and advised Mr. Binnersley of her decision.
36. SPC Heary provided a similar account of the chaos and the escape of the leashed dog and its ultimate retrieval from a different house. She said she provided the Notice of Disposition and other documents to Mr. Binnersley. She said that the form was partially filled out (before arrival) for operational reasons but if the dog had not been in distress, she would not have seized it.
37. Bandit was taken to Island Veterinary Hospital that evening and she understood that pain medication was started by attending veterinarian Dr. Sheila Finch. Dr Langelier continued Bandit's care the following day and when she spoke to Dr. Langelier, he provided his assessment and said he was seeking alternate veterinary opinions. SPC Heary confirmed she entered her notes into the BC SPCA Shelter Buddy system.
38. SPC Heary testified that the BCSPCA call centre received a call from a veterinarian about Bandit stating that she had assessed a severe trauma and dislocated hip and after she recommended surgery, the client left. SPC Heary weighed the fact the veterinarian was so concerned, she had called the appellant to follow-up and ultimately reported the cruelty to the BCSPCA (the call centre records, attached to the request for the Warrant, show on December 20, 2013 that Dr. Chappell made a cruelty complaint). It took until January 22, 2014 for the BC SPCA to make contact with the veterinarian to confirm the information including that she had advised Mr. Binnersley of the dislocation, the need for surgery, that Bandit was non-weight-bearing on that leg, and that she recommended pain control. SPC Heary explained the delay due to the fact there are only three SPC's for the entire Vancouver Island region, from Malahat to the tip of the Island including the Gulf Islands. The BC SPCA contacted the RCMP detachment to ask them to identify the dog owner and view the dog, and the attending constable reported back that he saw the dog happy, friendly and sometimes running on three legs.
39. Given her understanding of Dr. Chappell's assessment of grade 6/6 in pain and the fact SPC Heary couldn't verify if the dog had had its distress relieved, she obtained the warrant and prepared the Notice of Disposition. At the property, SPC Heary felt Bandit's hip bone protruding and knew something was wrong. While the dog used four legs, sometimes he limped and sometime he held the affected leg at an odd angle. She decided the dog was in distress and seized it. She followed up with Mr. Binnersley a few times in the days after the seizure to provide updates, mitigate costs and give him options. She said the surgery was performed; the dog was on pain medication plus post-op

medications and has restricted activity. SPC Heary stated that emotionally the dog is lovely and loves everyone. She adores Bandit; he is a social butterfly. The re-check on March 18, 2014 showed the veterinarian was pleased with the progress and the dog was on an exercise program. The BC SPCA plan was first to focus on medical needs and after that look to re-home him with a comprehensive adoption process. She agreed that an animal in need of veterinary care can still bond with its owner and some breeds are bred to be stoic and loyal.

40. SPC Heary responded to panel questions by acknowledging she did not know if the dog held its leg at an odd angle due to pain or mechanical issues. She saw a bulbous area elevated on the left hip and wanted to feel it and although she has no veterinary training, and did not want to diagnose, putting her hands on the dog better confirmed that it was in distress. She explained it took about 40 days from the December 20, 2013 complaint to the January 30, 2014 seizure due to call volume for animals in distress, geography and available resources. She says during those 40 days there were efforts to contact the dog's owner for information. When asked to explain what lameness 6/6 meant to her as she made her decision to seize, she said her experience when a veterinarian uses a lameness score and the animal is not bearing weight, it is due to severe pain. Her assessment was the dog was in severe pain.

Dr. Langelier Opinion and Testimony

41. Dr. Langelier, from Island Veterinary Hospital, in his February 17, 2014 letter to the BC SPCA said Bandit, a two-year old intact male Border Collie-type dog, was presented on January 30, 2014 with a history of a vehicle trauma mid-October 2013 and no veterinary care until early November 2013 at a Campbell River veterinary hospital. Despite being advised the dog had a left hip dislocation, the owners declined recommended treatment or surgery. The Campbell River veterinarian reported the dog to BC SPCA CID (Cruelty Investigation Department).
42. On January 30, 2014, Dr. Sheila Finch examined Bandit and noted he was bright, alert and responsive. The dog appeared normal except for left hind nails which were overgrown relative to the right and the left hind leg had decreased range of motion on flexion and extension. The "greater trochanter portion of the femur was palpable dorso-cranial relative to the right leg".
43. Pain relief was started and Dr. Langelier examined the dog himself the next day and found the same findings. The dog was anesthetized to get better radiographs of the hip and despite this the left hind leg could not be rotated normally or extended like the right leg. Dr. Langelier sent radiographs to three veterinarians for opinion; all recommended surgery and expressed concern about loss of cartilage on the luxated hip and that the leg was most likely considerably painful due to osteoarthritis and cartilage on bone movement in its luxated position. All surgeons recommended femoral neck and head osteomy which removes the ball part of the head of the femur including the sensitive cartilage and enables the formation of non-painful 'false' joint that, with physiotherapy, should provide better range of motion and function.
44. Dr. Langelier testified he has been practicing since licensed in 1982 and 60-80% of his patients are dogs. He confirmed Bandit had good body condition and was friendly and active with extensive scarring over the left hip with greatly reduced range of motion. He was concerned about the length of time this dog was left without treatment. He stated that the Campbell River veterinarian who initially saw Bandit was obligated under the PCAA to file a report. The end of Bandit's femur would rub on his pelvic bone and be sensitive and painful though the body does its best to heal, there would be a lot of discomfort that might not always be noticeable by an owner. He said it would be logical to know it was in pain due to the restricted range of motion. The fact the left hind nails were long tells him the

leg was sore and the dog would not weight bear, thus the nails did not get worn down at the same pace as other nails. He says of the three veterinarians he got opinions from, one was board certified and two specialized in this type of surgery. All were also disappointed that so much time had passed as it makes surgery harder and a more difficult post-op period. He discussed the option of doing nothing but this was a young dog that would be able to run normally after recovery and doing nothing meant sensitive cartilage and attachments and restricted range of motion. He explained the surgery and mechanism for recovery with the outlook after surgery of good mobility and pain free. Regular veterinary check-ups, he said, were necessary to monitor rehabilitation to ensure Bandit re-learned how to use the leg fully, along with monitoring proper muscle and scar tissue development. Physiotherapy needed to be monitored before new exercises would be introduced. Veterinary checks are recommended ever 3 to 4 weeks. Dr. Langelier confirmed that Bandit showed no signs of Lyme disease which can cause swollen joints but would not move them out of socket.

45. On cross-examination, Dr. Langelier acknowledged the photo of Bandit on all four and on three legs might have looked fine to a novice but that the locomotion showed the dog did not walk normally. He said Bandit was a really happy dog and was kind even when in pain and it would be hard for a lay person to look at this dog and see a problem; some dogs will move and eat even if in pain. He said it took a while for Bandit to get to this stage and he knows the dog was in pain and it didn't need to go through this. He reviewed the radiographs and explained loss of cartilage at the end of the bone and inflammation causing irritation in the whole joint and that the surgeons were concerned about arthritis. Surgery was performed with Dr. Wiren (one of the three veterinarians consulted) after getting BCSPCA permission and scheduling it. Dr. Langelier did not see any ear infection and said it was logical to assume that the owner cleared it through medication.
46. In response to panel questions, Dr. Langelier said his professional opinion was that the dog bore minimal to no weight on the leg the first few weeks due to extreme pain but the body would try to tighten up and the degree of pain would have diminished. He said there was a debate on whether they would be doing the dog a favour with surgery or leaving it alone but all opinions were to do surgery. After the worst pain the first month after the accident, months two and three would be severe enough – a nagging pain with stiff and sore muscles and arthritis setting in but Bandit is a nice dog and would want to please so he could be sore and still do things. The nagging pain would never go away and the hip was clunking in the wrong spot. In his opinion Bandit was definitely in distress.
47. Dr. Langelier said the signs of pain can vary quite a bit but a dog in pain can still wag its tail. Bandit's breed is good at hiding pain. Massage of the hip and leg could have helped or hurt; it was hard to say. Pushing down on the hip couldn't cause further damage but would be a little sore. There was so much scar tissue you could see a bump. If you rubbed the cartilage it could hurt. When asked if a lay person could learn anything from pushing it down, Dr Langelier said only that something was wrong as there was a big bulge that couldn't move. Although he considered doing nothing, doing nothing was not an option. Leaving the hip out of the socket was not a treatment option. Dr. Langelier said a lay person might not notice the different nail lengths but you would expect them to notice the gait. There was definitely gait disturbance.

The Appellant's Case

Earl Binnarsley Statement and Testimony

48. Earl Binnarsley, Bandit's owner, appealed the BC SPCA decision stating the seizure and detainment is unlawful and BC SPCA staff acted in bad faith and that one BC SPCA employee is facing criminal

charged related to unlawful seizure. Mr. Binnersley wants an order that the dog Bandit be returned to him and a declaration that no costs be inflicted upon him.

49. In his statement dated February 11, 2014, Mr. Binnersley states his dog was injured in his driveway and was in pain at the time but got better over the course of the next couple of weeks. He checked the dog every day for sore spots and did mild massage on Bandit's leg and hip. Apart from the first few days, Bandit showed no sign of pain but was limping for several weeks. Unsure what to do, his family scraped up some money and he and his mother Teresa Binnersley took Bandit to Campbell River Veterinary Hospital on November 6, 2013. The dog was sedated and x-rayed while Mr. Binnersley ran errands with his mom and when they returned, Dr. Chappell said the dog needed an operation to saw off a piece of bone and allow scar tissue to hold his hip together, which would cost a minimum of \$1,800. They made a partial payment for the cost of that visit and took Bandit home. There, the dog showed no signs of pain such as yelping, wincing or whining and although Bandit favoured the leg for a while, he became more active over several weeks. Mr. Binnersley would occasionally push down on the dog's hips so see how he was healing and Bandit would support that without flinching. Bandit, in the month after the veterinarian visit, began to run and swim and play as usual but would favour the leg when he overdid things. By mid-January he was his old self. On January 22, 2014, RCMP attended to observe Bandit and Bandit just returning from a walk, ran to the constable jumping up on him. On January 30, 2014, the RCMP and BC SPCA attended and ultimately seized Bandit. Mr. Binnersley describes a chaotic scene and says he was restrained by police during that process.
50. Mr. Binnersley testified in more detail about the day of seizure and confirmed that he didn't see signs of pain in Bandit.
51. On cross-examination, Mr. Binnersley said he came home the next day after learning Bandit was hit after his friend, Scott Ross, told him. Mr. Binnersley stated that Bandit was a little slow at the time, not bleeding from his nose or his bottom so he figured the dog was bruised and would get better. Bandit was holding his leg up. Mr. Binnersley's friend Shelley, after Thanksgiving dinner, suggested he take Bandit to the veterinarian and kept on asking how Bandit was doing and saying to take him to the vet as the dog was Earl's best friend. After a month or so, Mr. Binnersley did take Bandit to the veterinarian on November 6, 2013.
52. Mr. Binnersley said he "just wanted to make sure" and that there was nothing internal; it was more like a check-up. He said he did not trust the veterinarian and remarked that the x-rays were not of his dog, but then admitted he determined that at a much later date. He said Bandit is part of his community. When he learned about the surgery and physiotherapy, it didn't make sense for a dog that ran and played to be cut open and hurt, the dog was doing just fine. Bandit is the first dog he owned as an adult so this is heartbreaking. He did not have the money for the surgery in his pocket and he was away working for most of December so his friend Scott Ross took care of the dog. Mr. Binnersley said it wasn't the money; he just did not want to hurt his dog, which was so active. The veterinarian told him that Bandit would be in pain after the surgery and in surgery, would cut the bone, and Mr. Binnersley was totally against the operation. He did receive a call from BC SPCA and told them the dog was fine and rudely told them to mind their own business. On January 30, 2014 (the day of the seizure) he said he did not want the dog to go with the BC SPCA and was just trying to protect the dog. He says he could feel the lump on Bandit's hip but when he would touch and rub it and pull on the leg a bit, he never saw the dog's teeth.
53. In response to panel questions, Mr. Binnersley said in his view the symptoms of pain were a dog that was not active, or who would growl and yelp and Bandit ran and jumped. He pushed and pulled on

the dog's leg and hip several times with no symptoms of pain. He said he thought the dog would give a sign if in pain and pushing was a good test for pain. He said he misses the dog and in hindsight thinks he should have got a second opinion but didn't see the point as Bandit got better.

Mr. Binnersley stated that if he got Bandit back and there was another incident, he would see a veterinarian and if he disagreed with him, he would get a second opinion and if he disagreed with that, but those two opinions agreed, he would have to do what they said. He would be willing to abide by conditions and the community would know those conditions so he would even be okay with surprise visits but again said that he did not see the lump as an indication of a problem or of pain and it seemed to him that Bandit had full motion.

Sylvia Stewart Statement and Testimony

54. Ms. Stewart, a friend and neighbor of Mr. Binnersley's, provided her account of the events of January 22 and 30, 2014. She saw Bandit run and jump on the RCMP constable. She has known Bandit all his life and apart from the first few days, he showed little pain from the injury and less over time and he only favoured the leg after a long walk or run. He enjoyed running and swimming and jumping and she tried not to let him overdo his outings. She massaged the dog and he showed no sign of pain and enjoyed the massages.

55. In her oral testimony, Ms. Stewart confirmed she had no veterinary medical training. She acknowledged she had made an error referring to Bandit's right leg when she meant his left. She disagreed 100 percent with the veterinary assessment regarding the surgery.

William Binnersley Statement and Testimony

56. Earl Binnersley's father, William Binnersley said Bandit ran into his house scared on January 30, 2014 and he was soothing the dog when the BC SPCA officer entered his home and seized the dog. Since the accident, Bandit was not in any great pain after the first few days and not when returning from the veterinary visit. Over a month's time, Bandit progressed to running on all fours and jumping. He never heard Bandit yelp or moan in pain since several days after the accident.

57. In his oral testimony, Mr. Binnersley said Bandit comes to visit all the time and the dog is in a supportive situation. He said the dog looks good to him and runs. In October, he ran on three legs and by November was getting better all the time and by Christmas, Bandit was fine.

Teresa Binnersley Statement and Testimony

58. Earl Binnersley's mother, Teresa, describes the January 30, 2014 seizure of Bandit and recalls the November 6, 2013 veterinary visit where the veterinarian insisted Bandit needed sedation to x-ray him, and her son signed the consent form as owner. She says the veterinarian Dr. Chappell described the surgery to cut the bone and allow scar tissue to hold the leg in place, then they all returned home. Since then, Bandit showed remarkable improvements and is very active and enthusiastic and the pain the veterinarians said would come has not come. Bandit runs normally and favours the leg only after much exertion. He runs on all fours and jumps normally.

59. In oral testimony, Mrs. Binnersley said the dog was taken to the vet on November 6, 2013 not due to symptoms but because they wanted to be sure nothing was broken. She said Bandit limped but was getting better. She said it did not make sense to break a bone that was not broken, as the veterinarian said. The veterinarian did not give the dog painkillers and she herself knew the dog was not in pain. Bandit only favours his leg after exertion and after January 2014, would very seldom limp.

60. In response to panel questions, Mrs. Binnersley said that crying, whining, barking and licking wounds are the ways you tell a dog is in pain. She could tell by the dog's actions that Bandit was not in pain.

Scott Ross Statement and Testimony

61. In his deposition filed on another matter but included in this hearing as his witness statement, Scott Ross, Mr. Binnersley's friend and neighbor, said he was not at first aware on January 22, 2014 that the RCMP were attending Mr. Binnersley's property about a matter regarding Bandit. He describes as a dog who had just turned two and which was almost completely rehabilitated from an injury three months prior. He called himself the therapist working with Bandit, a miracle case able to run and jump and play without disability. He said he often tested Bandit for pain or discomfort by tugging on his tail or rubbing his old injury.

62. In his oral testimony, Mr. Ross said the dog was always around playing with his own Border Collie. Mr. Ross looked after Bandit in December up until Christmas and Bandit was running, swimming, playing with sticks and showed no sign of pain whatsoever even when playing roughly and pulling his tail. He considered that Bandit healed amazingly and if Bandit was his dog, he wouldn't do that operation in a million years.

63. In cross examination, Mr. Ross said Bandit would sometimes use three legs but would run on all four, and his own Border Collie would sometimes run on three legs; it was common for some dogs to do so. Bandit had no problem jumping or running fast. Mr. Ross has no veterinary medical training. He said the day of the accident, Bandit couldn't follow him so he carried the dog home and he was in pain for a few days and somewhat sore for a couple of weeks but in a short time was running and playing. The dog slept beside him in December and never showed signs of pain, not one bit.

64. In response to panel questions, Mr. Ross said signs that a dog was in pain were nipping or baring its teeth when the sore spot was touched, or being less likely to jump; none of which Bandit had. Mr. Ross gave Bandit pain tests by pushing down where the injury was and the dog bared its teeth at the start but it got progressively better. Mr. Ross says he administered this pain test twice a day the entire time between the accident and the day of seizure. He would also grab Bandit's leg and rotate it a bit. There were no signs Bandit felt any pain and his own common sense said this was a normal thing a diligent dog owner would do.

Bill Martin Statement and Testimony

65. In his statement, Bill Martin, a friend of Mr. Binnersley, said on October 14, 2013, he was backing his vehicle into a parking spot and within a few seconds after his vehicle came to a full stop, heard a yelp and exited his vehicle to see Bandit standing there holding his left leg off the ground, Mr. Martin thinks if his vehicle had hurt the dog, Bandit would have yelped sooner. His vehicle was very slow moving. Although he assumed Bandit had been hit, since he had not seen the actual accident, he now questions it saying he learned from Mr. Parsons that Lyme Disease is a disease on the island with similar symptoms including lameness and extreme inflammation in the hip joint, and this disease causes illness to flare and wane. He says Bandit was running and jumping about three weeks after the incident.

66. In his oral testimony, he said after the first few days, Bandit got around well. By the end of January he was getting around normally with no yelping and always happy and loved to play.

67. In cross examination, Mr. Martin says he is not sure his vehicle hit the dog as the dog was still running around but holding its left rear foot up. The dog hollered for a few minutes.
68. In response to panel questions, Mr. Martin said signs of pain would be if you hit the dog on the leg, it would holler. He did not notice any signs of pain except limping at the beginning, and that subsided after a few days.

Discussion

Was the Animal in Distress?

69. This appeal involves the seizure of an animal allegedly under distress pursuant to section 11 of the *PCAA*. The appellant takes issue with the validity of the seizure arguing that the Society did not follow due process and that the animal was not in distress. The appellant also argues that the animal should be returned and he seeks costs.
70. The Society argues that the seizure was valid, the animal was in distress and that if the animal was returned, the Society is not satisfied that the animal will be taken care of. The Society also seeks costs incurred by the Society under the *PCAA* with respect to the animal.
71. The appellant challenges the finding that Bandit was in distress at the time of seizure. The appellant's own testimony and that of his witnesses was that after a short period of recovery, Bandit was not in pain. He returned to his happy, playful self and did not show any outward sign of pain. Mr. Martin, the driver of the vehicle, testified that he was not even sure he hit the dog. Mr. Ross called Bandit a "miracle case" and said he was able to run and jump and play without disability. The appellant said Bandit's pain had all but vanished evidenced by the fact that Bandit ran and swam and played, and did not show signs of pain such as yelping or baring his teeth when Bandit's hips were pushed on. Other witnesses in the community agreed there were no signs of pain and gave varying accounts of the degree of limping or favouring of the leg after exertion. None of these people had any veterinary medical training. The appellant went further and disputes causation saying that rather than by collision with a vehicle, Bandit may be suffering from Lyme Disease. Mr. Parsons on behalf of the appellant also argues that the observations of those people in the community were vastly different than the level of pain predicted by the veterinarian; and even the Society's expert witness says the dog was capable of masking its own pain so an owner would be unaware. Mr. Parsons says a mere suspicion of pain escalated into a circus where police state power was exercised.
72. On the issue of distress, the Society relied on veterinary evidence to demonstrate that Bandit suffered an injury on October 14, 2013, in what must have been an impact with a slowly moving vehicle. By all accounts, there were obvious signs of pain including yelping, limping, non-use of the leg to varying degrees, according to the witness Bill Martin and other witnesses in the community commenting on initial crying and limping. Bandit was not taken to see a veterinarian until November 6, 2013 when he saw Dr. Chappell. He presented with non-weight bearing on left hind leg, pain on extension and palpable asymmetry at hip joint with a protruding area at the joint. She sedated the dog for x-rays and diagnosed a coxofemoral luxation. She advised Mr. Binnersley of her findings and cost of treatment and options and said doing nothing is not an option as the dog was painful and cannot use its leg. The owner and dog left, and over the next short period of time, she called them to determine what treatment the dog was receiving. When she received no confirmation the problem had been fixed, she made a cruelty complaint to the BC SPCA on December 20, 2013.

73. The Society tried to reach the owner about whether the dog received any treatment elsewhere and ultimately, on January 30, 2014, attended with the RCMP at Mr. Binnersley's property. After assessing the dog, it was seized and taken to a veterinary clinic. On January 31, 2014, Dr. Langelier examined the dog and confirmed extensive scarring over the hip, a visible lump, and greatly reduced range of motion and longer toe nails on the rear left foot. He took x-rays and sent them to three veterinarians for opinions and all concurred on necessary treatment. The operation was then done by Dr. Wiren and Bandit is recovering and happy.
74. In Dr. Langelier's expert opinion, Bandit was definitely in distress, with extreme pain at the beginning, followed by nagging pain with stiff and sore muscles and arthritis setting in and the hip was clunking in the wrong spot.
75. The Society argued that Bandit must have been showing signs of pain even while on the path to recovery as Mr. Binnersley took the dog to the veterinarian on November 6, 2013. After that, he did nothing and others also chose to do nothing. The Society argues that a responsible owner would get a second opinion if he disagreed with the first. The Society also questions why others were doing pain tests if the dog showed no symptoms of pain. If Bandit was stoic, it was all the more reason for a responsible owner to appreciate subtle signs of pain, and Bandit's symptoms were not subtle. SPC Heary was clear in her testimony describing the dog as not moving the way it should; two veterinarians found the dog to be in distress.
76. In my view, and based on the preponderance of veterinary evidence, I am satisfied that Bandit was in distress as a result of the accident. The dog remained in distress from that day forward, while in Mr. Binnersley's care and custody, as is evidenced by veterinary and witness testimony, including the fact Mr. Binnersley admits he did not seek any additional veterinary care or pain medications for Bandit. Bandit was injured and in pain and despite the fact that the pain may have lessened over time, or that Bandit may have hid some signs of pain and may have been active, Bandit was deprived of veterinary treatment (and thus satisfying the definition for distress: see ss. 1(2), *PCAA*). Following the report from the appellant's own veterinarian, the Society was correct to initiate its own investigation and, after confirming that Bandit was still in distress, the Society acted within the authority granted under the *PCAA* take the steps necessary to relieve that distress and to take Bandit into custody.
77. It does not persuade me otherwise that Bandit may not have shown a lot of the type of symptoms that Mr. Binnersley, uneducated in veterinary medicine, would have expected to see. I do not excuse Mr. Binnersley's ignorance of the condition of his dog. Dr. Chappell had told him the dog had severe pain and a dislocated hip/leg and Mr. Binnersley is not entitled to substitute his own pain assessments of the dog for a veterinarian's assessment. Although I agree it may not have "looked" like Bandit was suffering as he was happy and playful, the exposed cartilage and the dislocation and subsequent arthritis obviously created pain and a responsible, caring owner would have investigated and heeded veterinary advice. The fact that Mr. Binnersley ignored his dog's pain only created a situation that allowed the dog to remain in pain for an extended period of time.
78. In response to the appellant's argument that the Society failed to provide notice to the appellant of its concerns and give a time for compliance, this is not a requirement under the *PCAA*. The legislative framework was described in in *Eliason v SPCA, 2004 BCSC 1773* where Mr. Justice Groberman (as he then was) stated:

The scheme of the Act clearly is designed to allow the Society to take steps to prevent suffering of animals, and also to allow owners of animals to retrieve them, or have the animals returned to them, if they are able to satisfy the Society that the animals will be taken care of. [emphasis added]

79. In my view and on a fair reading of section 11 of the *PCAA*, upon concluding that an animal is in distress and that an owner has not acted promptly to relieve that distress, the Society can take the steps it considers necessary, as here where it seized the animal, to relieve the animal's distress.

Return of Animal

80. I turn now to consider whether Bandit should be returned if Mr. Binnersley is able to satisfy the Society that Bandit will be taken care of.

81. It is clear from the submissions of the Society that it is not satisfied that Mr. Binnersley will take care of Bandit. The Society challenged Mr. Binnersley's claim that he would cooperate with the Society if Bandit was returned with conditions imposed, pointing to his history of not taking Bandit to veterinarians before the accident, the 20 days after the accident it took to seek treatment, his failure to give permission for surgery, and his great distrust of veterinarians. The Society expressed grave concern over its ability to police conditions, should that be the ultimate decision, with an individual with a demonstrated aggressive response, who was suspicious of veterinary care and already shown to be an irresponsible dog owner.

82. Having heard all the evidence, I am not satisfied that Mr. Binnersley is capable of making good decisions in the best interests of his dog. He failed to seek veterinary treatment for Bandit immediately after the accident. He did himself massage and push down on his dog's hips and allowed his friend to perform twice daily pain tests with no understanding of the symptoms of pain or the potential for harm. Mr. Binnersley was unable to read or interpret symptoms of pain and believed that only certain symptoms such as yelping or baring its teeth were indicative of pain. Further, he believed, erroneously, that an absence of such signs of pain equated with no pain.

83. Mr. Binnersley delayed seeking veterinary treatment and when he finally did, he disagreed with the veterinarian's diagnosis and treatment plan and simply ignored her advice and substituted his own plan, which was based on no personal veterinary medical training and only a partial understanding of symptoms of pain.

84. Further, Mr. Binnersley watched his dog limp and sometimes favour its left hind leg and did nothing to further investigate this continued symptom, even after becoming aware of the veterinarian's diagnosis. He continued to substitute his own assessment of the dog's pain and mobility. He did not seek a second veterinary opinion. He did nothing to manage pain or symptoms other than massage. Mr. Binnersley saw the protrusion from the hip area and did nothing to investigate or correct this condition.

85. Bandit was denied timely treatment and relief from suffering for about three months, all the while showing some symptoms resulting from the injury. Mr. Binnersley was sadly mistaken to substitute his own assessment for a veterinarian's assessment and was incorrect to think his opinion on pain symptoms were complete or even accurate. Mr. Binnersley was wrong not to seek faster veterinary care or to follow a veterinarian's advice, and for certain it was open to Mr. Binnersley to seek an alternate veterinary opinion if he found Dr. Chappell's opinion to be so offensive. Although I understand his desire not to inflict additional pain and lengthy convalescence on a beloved dog, responsible ownership and the need to seek and follow veterinary advice must overtake an emotional response in such situations.

86. Mr. Binnersley says that in the future, should Bandit again become injured or sick, that he would correctly or adequately assess his symptoms and seek appropriate veterinary care in time or at all.

Bandit will have a lengthier recovery period and rehabilitation from his current injury than was necessary. I do not believe him. Mr. Binnersley has offered his view that in the future he would follow veterinary advice, but all his actions are to the contrary. He did not follow veterinary advice, did not recognize signs of distress, and substituted his own assessment for a veterinary assessment. He had the opportunity to seek a second opinion with the current injury but failed to do so and I am not convinced at all that this will change in the future. Throughout his testimony, I found that Mr. Binnersley lacked insight into his dog's condition and suffering and health, and continued to minimize his dog's suffering in spite of evidence and symptoms to the contrary. Further, his community of friends and neighbours did little to encourage him to take Bandit for veterinary examination and I heard no evidence that they would do differently in the future.

87. Therefore it is my decision, pursuant to Section 20.6 of the *Act*, that Bandit remain in the Society's custody and I permit the Society in its discretion to destroy, sell or otherwise dispose of the animal.

Costs

88. The appellant sought an order for costs. In his submission, he refers to the *Criminal Code of Canada* and *Offence Act*, neither of which has any bearing on the ability to award costs under the *PCAA*. The appellant also alleges bad faith, perjury and criminal acts on the part of the Society and sought costs in the amount of \$100 per day for each day the Society unlawfully kept Bandit and a further declaration that Society is responsible for all veterinary costs including future costs associated with the surgery and rehabilitation.

89. Section 47 of the *Administrative Tribunals Act* applies to appeals under the *PCAA* and allows BCFIRB to make an order for payment of costs. As the appellant was unsuccessful in this appeal and as I have concluded that the animal was in distress at the time it was seized and that it remain in the Society's custody, there is no basis upon which I would made an order of costs in favour of the appellant.

90. The Society seeks to recover its costs incurred caring for the appellant's dog, Bandit totaling \$2,638.69 pursuant to section 20 of the *PCAA*. This is made up of boarding costs of \$365 (January 31 to February 21: 21 days x \$15/day) and veterinary costs of \$2,273.69. The veterinary costs are broken down as follows: Invoice 412211 dated February 13, 2014 from Island Veterinary Hospital for \$521.11; Invoice 191285 dated February 20, 2014 from Prevost Veterinary Clinic for \$1,752.58; and BC SPCA invoice dated February 21, 2014 for boarding costs, de-worming and flea control totaling \$365 for the period ending February 21, 2014. The Society notes that the boarding costs are fixed as of February 21, so the per day cost declines the longer Bandit is in custody.

91. The Society also notes that it continues to incur boarding costs as well as staff time and incurred expenses travelling to and attending at the appellant's premises to execute the search warrant but it waives the additional sum incurred after February 21, 2014 except it retains the right to claim additional veterinary costs prior to BCFIRB issuing its decision. The Society does not waive its rights under section 20(2) of the *Act* and specifically invokes its right to payment prior to the return of Bandit, should that be ordered.

92. The Society points out that these section 20 costs are, in large part, costs that should have been borne by the appellant had he taken proper care of his dog. In this case, such costs include the provision of necessary veterinary treatment as well; costs incurred by the Society pertain to feeding and other care costs necessary to care for the dog while in the Society's custody (the boarding costs). A responsible owner would incur such costs when the animal remains in the owner's custody (provision of food,

clean water, clean and appropriately warm shelter, regular exercise, etc.) and it is therefore reasonable for the appellant to reimburse such costs to the Society.

93. Section 20 of the *PCAA* provides:

- 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.

94. Section 20.6(c) 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)”.

95. It is clear to me that Bandit required the necessary treatment, as confirmed by Dr. Chappell, Dr. Langelier and the three veterinarians who provided additional opinions, of the surgery to fix the leg/hip. As such, the two veterinary invoices are the liability of Mr. Binnersley and I confirm he must pay \$2273.69.

96. It is reasonable to me that Bandit incurred costs while in Society custody, costs such as shelter, food, water; which would have been borne by Mr. Binnersley if Bandit was with him. I confirm that \$315 is the liability of Mr. Binnersley and he must pay this amount.

97. It is not reasonable to me that Mr. Binnersley be charged \$50 for vaccinations/deworming/flea control for Bandit. There was no veterinary evidence that Bandit had either fleas or worms, and there was no veterinary recommendation regarding vaccinations. There was no breakdown as to what this catch-all category includes and as such, I am not confirming that Mr. Binnersley owes this \$50.

98. Pursuant to Section 20.6 of the *Act*, I am varying the total amount of which the owner is liable to pay and that new amount is the sum of \$2588.69.

Dated at Victoria, British Columbia this 15th day of April, 2014

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Corey Van't Haaff, Presiding Member