

**Nova Scotia Animal Welfare Appeal Board
Appeal Decision**

Citation:

M. W.

v.

Nova Scotia Society for the Prevention of Cruelty to Animals (SPCA)
2024NSAWAB1

Date: 20240204

Between:

Nova Scotia Society for the Prevention of Cruelty to Animals (SPCA)
and
M. W. (“the Appellant”)

Board Members: B. G., Acting Chair
F. M.
L. M.

Hearing Date: January 22, 2024 (by conference call)

Participants in the Hearing:

With the SPCA M. S., Legal Counsel
SPCA Chief Provincial Inspector J. L.
Inspector S. K.

With the Appellant: M. W., Appellant
M. T.
V. M.

Observers: J. S., acting as Secretary, Animal Welfare Appeal Board
K. S., observing with the SPCA

Legislation: Pursuant to the *Animal Protection Act*, SNS 2018, c 21 (“the Act”), the Animal Welfare Appeal Board (“the Board”) prepared for a hearing on January 22, 2024, to hear the appeal of M. W. relating to the seizure of one dog by the SPCA on January 5, 2024.

INTRODUCTION:

[1] The Animal Welfare Appeal Board received Notice of Appeal from the Appellant, M. W., on January 8, 2024. A hearing date was set for January 22, 2024, in relation to one dog, Daisy, seized by the SPCA from 326 Mahon St, New Waterford, on January 5, 2024.

REMEDY SOUGHT:

[2] The Appellant is seeking the return of the animal to the care of himself or to his sister, V.M.

PRELIMINARY MATTERS:

[3] No preliminary matters were raised.

EVIDENCE DISCLOSURE:

[4] The SPCA provided a disclosure booklet including photographs, and videos, prior to the hearing, which was designated Exhibit 1. The Appellant did not submit evidence prior to the hearing.

THE SPCA'S EVIDENCE:

[5] SPCA Chief Inspector J. L. gave verbal evidence for the SPCA. J.L. said that the investigation began when the Cape Breton Regional Police (CBRP) and the SPCA received multiple reports about a Siamese cat being mistreated on a YouTube live stream from "The Crazy M. W. Show".

[6] The information came from multiple sources who had seen the videos being shared on other social media channels. The video was being reposted with the headline "M.W. the cat abuser".

[7] J. L. testified that the first complaint was received at the end of December 2023. On December 31, an officer received a complaint of someone squeezing a cat on a YouTube show - many individuals called and wrote in to complain. J.L. spoke to Inspector S. K. with the Cape Breton SPCA about what to do. It was New Year's Eve and S.K. was alone in the office. J.L. told her it was best to refer it to the police, so they could look into it.

[8] On January 1 and 2, S. K. was in Halifax. On January 1 she had a training session in Halifax, and J.L. spoke with her that day.

[9] On the evening of January 2, J.L. watched more videos, and reached out to CBRP herself. She spoke with Sergeant E. H. E.H. said he had warned M. W. to stop making threats to peace officers and to not hurt the animals, or there would be a seizure and criminal charges.

[10] On the morning of January 3, J.L. got more information from E.H. That day J. L. did not take action. Then on January 4, complaints were still coming in, and live on YouTube J.L saw the event where a caller offered 36 beer for "Crazy M. W." to cut his fridge with a chainsaw.

[11] J.L. described how she observed Daisy walking in the kitchen, heard M.W. in the next room kicking beer cans out of the way and yelling for Daisy to get in her cage. He then found his chainsaw. He started and revved the chainsaw, and he was dancing around and there were smoke and fumes in the kitchen. J.L. said he appeared to be intoxicated, almost in a crazed state.

[12] J.L. said she also remembered that there was a prior concern regarding motorcycle fumes indoors with a cat. No further details were provided.

[13] J.L. says she believes the animals were suffering from stress and anxiety. She did see a video of the Siamese cat, where he appeared to be holding it tightly or squeezing it. She saw a potential situation where the cat could be in further distress, and there were other videos that she could not preserve for evidence, although some she recorded from a laptop screen. She recorded them with her phone.

[14] Between 11 to 11:30, he was still drinking on screen. He vomited in a bucket and then it appeared that Daisy was eating from it. Comments were coming in saying, "feed your dog", so he dumped food on the floor, then later vomited on the floor. She said it looked like he vomited where he dumped the dog food, likely contaminating it. She believed that the contaminated food, plus operating a gas chainsaw indoors, created a toxic environment.

[15] J.L. didn't record some of these on her phone, and she could not find them the next day. She believes they were taken down.

[16] J.L. believes they were unsafe and unsanitary conditions, and therefore the animals were in distress under section 2 (f). It was an unsafe environment.

[17] J.L. stated that because the Appellant had been warned by the police two days prior, she felt that there was a pattern of the Appellant continuing with the animals in distress.

[18] J.L. also stated that the Appellant looked impaired - on a scale of 1 to 10, she estimates an eight or nine. He was stumbling, vomiting, etc. She was concerned viewers would call in more dares.

[19] On the evening of January 4, J.L. contacted S.K. to look at removing the animals. J.L. told her "it might be time we take some action."

[20] They discussed preparing an ITO, and decided that they would be looking for police assistance. The plan was to remove both animals.

[21] The decision was made to go directly to seizure with no visits, no conversations, and no orders to comply (OTC), because the Appellant had already received a verbal warning by police, and he was making threats regarding Animal Control. J.L. felt that an OTC would be ineffective, and circumstances required immediate removal of the animals because of the extreme circumstances she had viewed online the night before.

[22] At the seizure, she said they had two other SPCA officers attend to make sure they were not alone, just in case. The dog, Daisy, was in good shape, and approximately three years old. Its coat was a bit dirty, and the nails were a little bit long. Daisy was timid but generally a good dog.

[23] There was a dog crate in the home. In J.L.'s opinion it was too small for Daisy. She wouldn't be able to stand up comfortably and it didn't have any bedding. There were tooth marks and nail marks on the tray and on the wall around the kennel.

[24] J.L. said they have received more complaints about the cat's safety, and about axes being thrown indoors. There is significant damage to the fridge from the chainsaw and axes. Concerns were also raised about there being no heat in the home, and also about the portable heater being a possible source of burns to the animals if they get too close.

[25] M. T., representing the Appellant, had questions for Chief Inspector J.L. He asked J.L. to clarify why Mookie the cat is still in the house, and why did the SPCA not go back to get Mookie? He also asked about the dates of the newer complaints regarding axe juggling, and if she was aware of the cat being placed in a cage for safety while the Appellant was axe juggling.

[26] J.L. answered that the axe juggling safety complaints occurred on January 20, 2024.

[27] M.T. asked: did all of these clips and events include alcohol? J.L. said, "yes, but maybe not only alcohol." She suspected that there were other substances being used.

[28] Additionally, on the Appellant's live stream this morning, there were new slogans, such as "ACAB garbage" painted on the fridge.

[29] Also, at approximately 9:55 am that morning, just before the hearing, he appeared to ingest mushrooms on screen.

[30] Inspector S.K. also gave verbal evidence for the SPCA. She stated that on December 31, 2023, they received complaints about a video of someone holding a cat so tightly that it was crying out. On January 1, 2024, more complaints were received regarding that video - approximately two dozen complaints overall.

[31] On January 2 at 2:30 PM on YouTube, she watched the Appellant urinate in a bucket. Daisy started to lap it up and he pushed her away. He was making threats online, calling the SPCA "rats".

[32] On January 5, the day of the seizure, they arrived at 11:05 AM. The front door was blocked. They knocked at the back door. There were no dog sounds.

[33] A man who called himself the Appellant's pastor appeared and offered them the key. They accepted the key and used a catch pole to catch Daisy in the doorway. She went with them happily and they put her in the van.

[34] When they entered the home, there was an extremely strong alcohol or beer smell. They would estimate at least 100 to 200 beer cans were overflowing around a motorcycle.

[35] They searched the whole home for the cat but did not find it.

[36] The floor was dirty, and there was debris all over. The litter box was full. There was broken mirror glass in the bathroom, which was a concern for the dog's feet. There were beer cans crushed, which might have sharp edges, another concern for the dog's feet. Inspectors did not notice any water bowls. They spent about 10 to 15 minutes in the home, and did not see any toys or leashes.

[37] The Appellant was not there - CBRP had told her that he would not be there. They said they took him to the hospital for assessment.

[38] Daisy was a bit anxious, and her nails were too long. That suggests she has been kept mostly indoors recently.

[39] The neighbour told them that Mookie the cat comes home at night. It's an indoor / outdoor cat. Inspectors left without finding the cat. They did leave a carrier with the neighbour in case he caught the cat.

[40] Inspector S.K. stated that she spent a lot of time on the Appellant's YouTube live feed, and saw the cat and the dog, and the urine in the bucket. She specified that her concerns were from direct observation, not just from the complaints.

[41] Inspector S.K. sought a warrant to seize both animals. She drafted the ITO late on January 4 and took it to the courthouse early on January 5. The warrant was granted on the morning of January 5, 2024.

[42] On January 5, 2024, Inspector S.K., Inspector S. W., and Inspector C. S. attended the property along with CBRM police constables to execute the seizure. The house was described as dirty, and cold, and there was running water but no water dishes were seen available for the animals. The dog was seized. The cat was not found that day and was never seized.

[43] Counsel for the SPCA outlined that the inspectors were acting under sections 2, 26, and 30 of the Act. They believed that the animals were in an unsafe environment, and needed to be seized immediately.

[44] SPCA Counsel M. S. gave closing remarks for the SPCA. He stated, "This case is slightly less straightforward in the application of the Act."

[45] M.S. cited section 2 subsection 2 (f), of the Act, which says "An animal is in distress if the animal is... kept in conditions that are unsanitary or unsafe so as to impair the animal's health, safety or well-being;"

[46] He also referred to section 30 subsection 7. "Where an animal is not in distress, but the inspector has reasonable and probable grounds for believing that an animal has been abused or tortured by the actions of its custodian, the inspector may seize the animal."

[47] He went on, "We have someone who is extremely unwell. Clearly in crisis. And they do not assign blame. The Appellant was doing things dangerous for himself and his animals, and was showing an escalating pattern of behaviour. The inspectors watched online."

[48] M.S. argued they could maybe argue direct abuse, in the instances where he may have kicked Daisy, or contaminated the dog food. They felt the two animals were living in an unsafe environment. They decided not to wait for something horrible to happen. They saw a pattern of escalating behavior. Under section 26, subsection 5 (d) they felt the animals required immediate seizure.

[49] Regarding the cat that has not been seized, M.S. stated there can be no inference drawn because the cat couldn't be found and was left there.

[50] M.S. stated it is an unusual case. They did not try to call and talk to him because they felt, at the time, "that is not somebody that the SPCA can work with".

THE APPELLANT'S EVIDENCE:

[51] M. T. represented the Appellant, and presented evidence on his behalf. He testified that he has been to the Appellant's home lots of times, and the animals are always healthy.

[52] He stated that nobody is disputing the SPCA claims regarding what they saw – M.W., the Appellant, was having a medical crisis. He knew that he was having a relapse, and had been trying to get checked into hospital for several weeks to get assistance and detox. No beds had been available.

[53] Shortly after the SPCA seized Daisy, the Appellant was able to get a hospital bed and did detox in the hospital. He is now back in recovery. Thomey testified that the Appellant is not drinking alcohol.

[54] The Appellant also has pancreatic cancer. M.T.'s girlfriend is prepared to take care of the cat in a few months when that may become necessary.

[55] M.T. said the house is all cleaned up, and Daisy's dish is still in the corner. It's bright blue. The day of the seizure, the bowls may have been covered by stuff, but were always there.

[56] M.T. testified that Mookie, as a Siamese cat, is always very verbal. Regarding the video clips of the Appellant holding the cat – he said, "when you know Mookie, those are regular Mookie sounds."

[57] The limping was from a different time, and not at all related to the video where it looks like he was being squeezed.

[58] He testified that the animals were never in a dire situation. Daisy is a beautiful, healthy, German Shepherd dog. She has a long leash outside the covers the whole yard.

[59] Regarding any possibility of anxiety, M.T. explained that the animals are used to their owner being loud for the show - the cat is usually purring and walking around.

[60] M.T. admitted that the Appellant "is guilty of drinking alcohol and saying stupid things online."

[61] He clarified that the ACAB graffiti refers to "all cops are bad", which is a social theme, and it's all part of the Crazy M. W. show.

[62] He clarified that the heater is fully covered with a grate, so no animal can touch the hot parts.

[63] M.T. said, "There is no denial of the events that occurred." He said that all of this behavior involved alcohol. He admits that there was certainly an alcohol problem and losing Daisy made the Appellant see how serious that was.

[64] He explained that the large number of complaints is because that one video was shared virally into other groups. It was a campaign to raise complaints, and it was successful. Those groups have since banned members from talking about Crazy M.W. and put an end to the social media campaign against him.

[65] Counsel M. S. from the SPCA had questions for M.T.

[66] He asked M.T. if the Appellant had alcohol struggles for a long time. M.T. answered that the Appellant had not been drinking for years.

[67] M.S. asked if that alcohol relapse was in full swing in late December 2023. M.T. answered "absolutely".

[68] M.S. asked if M.T. was there on the property on January 5. M.T. responded that he had texted the Appellant that morning, and then showed up later to get Mookie - but Mookie was fine.

[69] M.S. asked about the videos and if M.T. can agree that it's concerning. M.T. answered that in context, the videos showed a bad week, and then all of the re-posts and comments online snowballed. He said it's a frozen in time moment, out of context.

[70] M.S. asked, "So the cat holding video was not OK?" M.T. responded, "What's considered abusive? I didn't consider it to be abuse."

[71] M.S. asked about a video where the appellant seems to kick Daisy. M.T. replied that the clip showed him pushing her away - it was not a kick. He put his foot on her and pushed her away. It was a game they like to play. Daisy always chewed on the toes of those work boots, and sometimes got carried away. The Appellant was playing with her, and when she got carried away he just pushed her away to make her stop.

[72] M.S. asked if M.T. had seen the video regarding the chainsaw in the fridge. M.T. replied, "No, I did not see that one."

[73] M.S. questioned him about the dried mushrooms that it appeared the Appellant ingested that morning just before the hearing began. M.T. replied that they were pizza mushrooms that M.T. had brought over. It's all for the show - it's all an act.

[74] M.T. stated that they should've had all of this information in an open conversation before they ever considered seizing the animals.

[75] The Appellant's sister, V. M, also gave evidence. She stated that Daisy was unjustly taken.

[76] V.M's daughter is Daisy's regular walker and normally took her to the dog park every day, until the weather got too cold and the Appellant relapsed and began drinking alcohol. Her daughter is 31 years old, but she is developmentally disabled, and V.M. does not let her daughter spend any time around people who are drinking alcohol. She is very sheltered.

[77] V.M. testified that her brother had been working with her, and with the methadone program, to get a detox bed for weeks before the incident in question.

[78] Regarding his state in late December, she believes he was in an alcohol-induced psychosis at that time. She has been a nurse for many years and has a lot of experience. She believes he clinically had psychosis at that point.

[79] V.M. testified that the day Daisy was taken was hard on all of them. CBRP officers grabbed both her and her brother when they came to detain him, and handled her so roughly they left bruises on her arms.

[80] M.S. had questions for her. He asked her to clarify the timing of the Appellant's relapse. V.M. stated that her daughter stopped walking Daisy in November when it got too cold. It was after Halloween. Her brother had relapsed by December. She believes he was fully in psychosis by Christmas Eve.

[81] Regarding Mookie, V.M. stated that the cat does normally cry like that - that is how she acts all the time.

[82] V.M. also clarified that Daisy is 18 months old. The Appellant had been sober since just before he got Daisy.

[83] M.S. asked V.M, were you concerned that it would not be safe to be in the house? V.M. did not agree, and reiterated that her daughter is just kept *very* sheltered.

[84] M.S. asked for clarification about the psychosis. V.M. explained that the Appellant was not himself. He was acting well outside how he would normally act. He had reached out because he needed help badly. He needed an intervention, and it had been a fight to get him a detox bed.

[85] V.M. went on to say that on the day he was supposedly taken to hospital for involuntary assessment by police, it was ridiculous that they sent him home. He was totally unwell. He had no common sense. He needed help immediately. He had been seeking help. For example, the incident with the chainsaw - he would not do that unless he was very unwell. She knew immediately that he was in alcohol psychosis. At that time he could not take proper care of himself.

[86] M.S. suggested to V.M. that the seizure had prompted the change in the Appellant's behavior. V.M. said yes, but it wasn't necessary to seize Daisy. She does not agree that he was abusing the dog. Daisy was still being cared for, fed, etc. - but not loved and cuddled like those animals are used to.

[87] V.M. further clarified that both the seizure of Daisy and finally getting into detox were catalysts in his recovery.

[88] M.S. had further questions and asked if V.M. had seen the Appellant kick the dog. V.M. said no, she had not.

[89] She clarified that "Mookie cries like that and I don't think that he was squeezing her" regarding the cat.

[90] Regarding the chainsaw video she stated that the animals were locked up safely and put away before he started the saw. He picked up Mookie and put her away. She knows that because she had just called him on the phone. She was trying to talk him out of doing the dare, but he wouldn't listen. He just wanted the beer. He was sick and in relapse.

[91] M.T. also had questions for V.M. She clarified that Mookie is fine.

[92] V.M. testified that they should have given Daisy back to the Appellant when he got out of the hospital. V.M. stated, "I think mistakes were made and Daisy should not have been seized."

[93] The Appellant also spoke. He stated it's the hardest relapse he had ever gone through. He apologized to the SPCA, and said he was mad at the SPCA because they didn't take away the pit bulls up the street that had attacked him.

[94] Regarding that cat's sore paw, the Appellant stated Mookie had jumped on the stove one day while the burner was still hot, and had burned one paw. That was why the cat had a limp in a video. That clip was on the show months ago. Mookie has never jumped on the stove again. The Appellant also no longer uses that burner, to make sure it won't happen again.

[95] The Appellant testified, "every time I did crazy stuff my animals were safe." For example, he stated when he did a bike burn out with his motorcycle in the house, he had put Daisy in her kennel, covered with a blanket, in the bathroom. He had opened the bathroom window for ventilation and closed the bathroom door and put a towel across the bottom of the door before he started the motorcycle.

[96] M.S. had questions for the Appellant. M.S. asked him to explain the kick video. The Appellant explained that Daisy always loved those boots, and she would bring over the boots to play with him. He would put the boots on and move his leg back-and-forth for her, and she would chase it and chew on it. She loved it. It was one of her play times.

[97] M.S. asked about the red bucket in the video sometimes called the rat bucket. The Appellant stated that he did throw up in the bucket when he was sick, not on the floor. Regarding the name rat bucket, the Appellant stated, "I don't like rats - not two legged or four legged."

[98] M.S. asked about his relapse before Christmas. It was pretty bad? The Appellant responded yes. December 13 was when he relapsed. He has been on daily methadone for 16 years.

[99] The Appellant stated that now he's in recovery, and the house is totally clean. The mushrooms were fake for the show. He stated again with strong emphasis, "Everything. Is. For. The. Show."

[100] The Appellant explained that when anything was happening that might be dangerous, the dog was in the kennel in the bathroom with a towel under the door, and the cat was safely upstairs. He said in the future, if he is doing anything like that in the house, he will put the animals outside to be sure they are safe.

[101] He explained that Daisy drinks out of the toilet by choice, and she only wants to drink from the toilet. Therefore he keeps the toilet clean for her; he goes outdoors when it's warm or he pees in the bucket when it's too cold.

[102] The side room that was a mess is now cleaned up and being used for storing his firewood, which was previously kept outdoors. Now it will be dry and burn better.

[103] He explained that on December 13 he relapsed; he made a mistake of going to have wings with a friend, and had a beer. By December 16-17 he realized he was relapsing and needed help, and started calling detox. He added that the police officers had hurt his neck and head when they shackled him and dragged him down the street to their cruiser to take him to the hospital for assessment that day. The appellant said, "all they had to do was talk to me. All they had to do was say, M.W., clean the house and get in detox or we are taking the animals."

[104] M.T. had questions for the Appellant. He asked, should Daisy have been taken? Was she abused? Do you take better care of the animals than you do yourself? The Appellant responded, “No she should not have been taken. She has never been abused. Yes I do take better care of them than myself.

[105] The Appellant clarified that he had never received a warning about this. He had not been approached by CBRP at home. He had not been warned that his dog might be seized. He did receive some prank calls pretending to be police, but they all came from long distance numbers, he thinks they are the same people who were lodging complaints. He had no calls from local numbers that could have actually been the police.

[106] M.T. gave closing remarks on behalf of the Appellant.

[107] He argued that by taking Daisy, and leaving Mookie, they are violating their own Act - by allowing one animal to remain in what they call distress. M.T. stated that it's not lawful.

[108] He said they knew the Appellant was at hospital. That was the chance to check Daisy, and see if she was being abused.

[109] He reiterated that nobody from SPCA or CBRP had talked to the Appellant about the animals. Regarding E.H. claiming to speak to him on January 3, he said, “the police officer stated that the complainants are trolling M.W. online. This was after New Year's, but before Daisy was seized”. He said the officer did not talk to him about the welfare of the animals. He did not give him any instructions or warnings. “They never spoke to him at all before they seized his dog.

ANALYSIS:

Under Subsection 38 (5) of the *Animal Protection Act*:

“After a hearing, or at any time with the consent of the person making the appeal and the Society or the Minister, as the case may be, the Appeal Board may order that

- (a) an animal seized inappropriately be returned to its owner or to the custodian on behalf of the owner at no cost; or***
- (b) an animal seized appropriately be retained by or***

returned to the Society or Minister to be sold, given away or euthanized.”

[110] Accordingly, the Board has one clear task – to decide whether the process leading up to the seizure, and the execution of the seizure, were carried out appropriately or not.

[111] The Board considered the SPCA’s video evidence, which was put forward to support three points – that the Appellant posed a danger toward law enforcement and animal control officers, that the dog and cat were in danger, and that the animals were being abused.

[112] The Board viewed the videos showing the Appellant committed improper handling of the dog on one clear instance. The Board viewed this video to be credible, but notes that the inspectors had no first hand knowledge of the Appellant’s behaviour outside the YouTube show. That is not a reasonable amount of knowledge about a person.

[113] The Board considered the SPCA statement regarding one prior concern that the Appellant had done a “brake burn” with his motorcycle inside the house, filling the house with smoke and fumes. No photos, videos, or further information of any kind were provided in the SPCA evidence. There was no evidence that the Appellant had any animals present at the time. The Board was not presented with any evidence to support the truth or relevance of the statement, and accordingly, gives it little weight in this decision.

[114] The Board considered the Appellant’s evidence that he genuinely cares for the animals, did not intend them any harm, and took steps to protect them from harm while he was doing his show. The Board found the Appellant believable on these points.

[115] The Board considered the Appellant’s statements that he did not kick the dog. The Board did not find these claims to be entirely believable. One video clip showed him using his foot to kick or shove the dog away from the cat’s food. The dog was seen to be abruptly moved aside by the foot. The dog did not appear to be injured or traumatized, and showed no reluctance to be near the Appellant. The dog was not noted to have any behavioural concerns that would have arisen from repeated mishandling. The majority of the Board finds that this was not sufficient evidence to reasonably conclude the dog was being abused. One Board member felt that it was definitely a kick.

[116] There was no evidence of any health issues or injuries to the dog. There was no suggestion of past injury. The negative notes were that Daisy’s coat was a bit dirty and her nails were slightly overgrown. These issues were not severe.

[117] The original complaints all related specifically to one video of the cat; they had nothing to do with the dog. The video featured the Appellant holding the cat tightly and showing it the reflection in a mirror while the cat vocalized loudly . It was being reposted intentionally by other people, with an inflammatory headline, to raise ire. It was intended to flood authorities with complaints. Both the CBRP and SPCA received public pressure to take action.

[118] The file was shuffled back and forth between the SPCA and CBRP. The original complaint came in to CBRP on December 31, and it appears they referred it on to the SPCA that same day. It appears to have been referred back to CBRP that same day. Then on January 2, it was turned back over to the CBRP again by Inspector S.K. The Occurrence Report states, “Due to the nature of the case, and the SOC known to be hateful and dangerous towards law enforcement, the case was referred to POLICE by S.K.”

[119] Both J.L. and S.K. stated that they saw the Appellant make repeated threatening comments and gestures toward peace officers in his shows. The Board notes that his behaviour in the evidence clips was verbally hostile toward authorities. However no explanation was provided to back up the statement that the Appellant is actually dangerous to law enforcement. The only evidence before the Board were the brief video clips from the YouTube show. There was no evidence or even a suggestion of any history of causing harm or prior aggressive interactions. The SPCA's handling of this case was based entirely on the extreme risk of having any interaction with the Appellant. That has not been shown in evidence.

[120] Chief Inspector J.L. also had a conversation with CBRP on January 2. She spoke with E.H. that day, and he agreed to send CBRP officers to the house. This is noted in S.K.'s statement. S.K. goes on to say that late on January 2, E.H. emailed J.L. and stated the following "M.W. was warned not to be harming or acting to harm his animals or threaten 'Animal Control' any further. Any continuance of these may result in investigations leading to his animals being seized or criminal charges for threats. M.W. acknowledged the verbal warning."

[121] The Board received only this brief evidence regarding an important conversation that took place between CBRP officers and the Appellant. There is no copy of any emails in the disclosure file. The evidence on this key point is sparse and unclear – the only information we have is that short quote and it says that the Appellant was warned that his behaviour "may result in investigations leading to his animals being seized or criminal charges for threats." They appear not to have given him any written directions, nor warned him that seizure could be immediate. The warning was incomplete and insufficient.

[122] The Board notes that the statement "M.W. acknowledged the verbal warning" does not negate the requirement for a written directive. Under section 23 of the Act, verbal instructions must be followed up in writing.

[123] The Appellant was only warned verbally, and seems to have been told that an investigation would be the next step. The Board has no other evidence regarding that warning conversation that took place between CBRP and the Appellant. Communication from the SPCA to the Appellant was nonexistent. There was never any phone or email contact between SPCA and the Appellant. He was never issued a directive, nor any Orders to Comply. Nor was he issued any Summary warnings, tickets, or fines.

[124] The Board was asked to apply three specific sections of the Act in our deliberations:

2.2(f)
26.5(d)
30.7

[125] Section 2 subsection 2 (f) states, "An animal is in distress if the animal is... kept in conditions that are unsanitary or unsafe so as to impair the animal's health, safety or well-being;"

[126] The Board unanimously finds that on the night of the chainsaw incident, the house was an unsafe environment.

[127] The majority of the Board members find that the second part of the sentence, "so as to impair the animal's health..." was not met. The Appellant did not intend any harm to the

animals. The wording “so as to” indicates that it must have been the purpose. No such intent was suggested or shown, therefore this criteria was not met.

[128] One Board member dissented on the interpretation of this point. The dissenting opinion was that the environment was so unsafe that the Board did not need to find intent as well.

[129] Section 26 subsection 5 (d) gives an inspector the authority to seize an animal without giving the owner a chance to cooperate if, “the inspector determines that the distress is of a nature or has surrounding circumstances requiring immediate seizure to alleviate suffering or to preserve life.”

[130] The Board finds that the criteria under 26.5(d) were not fulfilled. The majority of the Board members found that the dog did not require “immediate seizure” to preserve its life on January 5, 2024. The dog was not in any danger or distress that day. Therefore that section was not applicable to this seizure.

[131] One member dissented, and felt that the extreme danger was ongoing, and therefore the criteria had been satisfied.

[132] The majority decision is that section 26.5(d) did not apply, and therefore subsection 3 could not be waived. The inspectors were required to make attempts to work with the dog’s owner before taking drastic action.

[133] Section 30 subsection 7 states, “Where an animal is not in distress, but the inspector has reasonable and probable grounds for believing that an animal has been abused or tortured by the actions of its custodian, the inspector may seize the animal.”

[134] The majority of the Board members find that the dog Daisy was not abused or tortured. There was one instance of mishandling, which appeared minor and would not reasonably be considered abuse. One member dissented on this point and considers it abuse.

[135] One Board member had a final point overall dissent with the majority decision - “My primary dissent was to the creation of a dangerous environment with the use of the chain saw and axes. There was no clear evidence of the location of the animals during this video segment, and the Appellant’s erratic behavior appeared to be escalating; therefore, I feel the SPCA was justified in seizing the animals as it was in the pets’ best interest, with the knowledge that they had at the time.”

DECISION:

[136] After lengthy deliberations, the Board majority finds that the seizure was not carried out appropriately under the Act, and is therefore overturned.

[137] Accordingly, the dog Daisy shall be returned to her owner at no charge.

Verbal decision delivered on January 24, 2024.

Signed February 4, 2024

A handwritten signature in blue ink, appearing to be the initials 'B.G.' with a stylized flourish.

B. G., Acting Chair