

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:

STANLEY BILSKI

APPELLANT

AND:

BRITISH COLUMBIA SOCIETY FOR
THE PREVENTION OF CRUELTY TO ANIMALS

RESPONDENT

DECISION

APPEARANCES:

For the British Columbia
Farm Industry Review Board:

Peter Donkers, Chair, Presiding Member
Mary O'Callaghan, Member
Dennis Lapierre, Member

For the Appellant:

self-represented

For the Respondent:

Andrea Greenwood, Counsel

Date of Hearing:

March 27, 2019

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*) related to the seizure of one female dog.
2. The appellant appeals the March 1, 2019 review decision issued under s. 20.2 (4)(b) of the *PCAA* by Marcie Moriarty, Chief Prevention and Enforcement Officer for the British Columbia Society for the Prevention of Cruelty to Animals (the society).
3. Section 20.6 of the *PCAA* permits the British Columbia Farm Industry Review Board (BCFIRB), on hearing an appeal 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 animals. The appellant in this case is seeking the return of one dog.
4. The appellant represented himself and gave evidence. He did not call any other witnesses. Through its counsel, the society called three witnesses: the owner of a kennel contracted to act as the area pound who had prior experience with the appellant and his dogs, the society's seized animal liaison administrator, and the animal protection officer (APO) who had contact with the owner before, during and after the seizure. The hearing was recorded.
5. For reasons explained in detail later, the panel has decided not to return the dog to the appellant and pursuant to s. 20.6(b) of the *PCAA*, the society is permitted, in its discretion, to destroy, sell or otherwise dispose of the dog. The society did not seek to recover any costs incurred with respect to the seizure or for care of the dog while in custody and, as such, there is no costs order.

II Preliminary Matters

6. The appellant has no fixed address and did not recall receiving the society's second set of disclosure documents (Exhibits 9 – 13 including notes of Ms Lathey, the society's submissions, affidavit of M. Moriarty, witness contact form for Ms Lathey and an updated index) which were couriered to his last known address on March 21, 2019. By sending the documents to the appellant's last known address and in the absence of notification of an alternate address for service, the panel finds that the society met its disclosure requirements to the appellant. Despite not having these documents in hand, we are satisfied that the appellant, having the society's initial disclosure materials, understood the substance of the society's allegations against him and had an adequate opportunity to respond to those allegations in the oral hearing.
7. The appeal was heard by way of teleconference on March 27, 2019 commencing at 8:30 am and ending at 2:25 p.m., after hearing all of the evidence and closing submissions by both the appellant and the respondent.

III Material Admitted on this Appeal

8. The following materials were admitted into evidence:
 - a) BCSPCA March 1, 2019 Decision (**Exhibit 1**)
 - b) Appellant March 1, 2019 Notice of Appeal (**Exhibit 2**)
 - c) Appellant March 4, 2019 receipt for filing fee (**Exhibit 3**)
 - d) BCFIRB March 4, 2019 Notice of Appeal (NOA) process letter (**Exhibit 4**)
 - e) BCSPCA March 4, 2019 email requesting change of date for hearing (**Exhibit 5**)
 - f) BCFIRB revised March 5, 2019 NOA process letter (**Exhibit 6**)
 - g) BCFIRB further revised March 7, 2019 NOA process letter (**Exhibit 7**)
 - h) BCSPCA initial disclosure (Tabs 1-14) (March 11, 2019 by courier) (**Exhibit 8**)
 - i) BCSPCA further disclosure (Tabs 15-16) (March 21, 2019) (**Exhibit 9**)
 - j) Written Submissions of BCSPCA (March 21, 2019 by email and by courier) (**Exhibit 10**)
 - k) Affidavit #1 of Marcie Moriarty (March 21, 2019 by email and courier) (**Exhibit 11**)
 - l) BCSPCA Witness contact form for Louise Lathey, and APO Cassandra Meyers (March 21, 2019 by email and courier) (**Exhibit 12**)
 - m) BCSPCA Updated index for document disclosure with (Tabs 15-16) for binder (March 21, 2019) (**Exhibit 13**)
 - n) BCSPCA March 22, 2019 email requesting Diana Decker as witness (**Exhibit 14**)

IV History Leading to Seizure of Dog and the Day of Seizure

9. The society disclosed documents which set out its history with the appellant. Prior to seizure, it was known by authorities including the RCMP and the society that the appellant had been living out of his car – off and on – for an extended period of time.
10. In December 2016, the RCMP received a complaint from a member of the public that a dog was abandoned in the car. The attending constable found the dog inside the appellant's car tethered to a leash. When removed, the dog was excited and difficult to control. The appellant indicated he was trying to find a home for himself and the dog, and the constable took no further action.
11. On November 28, 2018, the constable had a second interaction with the appellant at a vehicle stop. The constable noted:

Mr. BILSKI's vehicle had to be towed from the area as it was discovered his licence had expired. When the tow truck driver arrived Mr. BILSKI stated he could not take Marsha out and the tow truck driver could not get in the vehicle to maneuver it himself because Marsha would likely jump on him. Mr. BILSKI had made comment that Marsha's behaviour was bad because he believed the

place he bought her from was a "puppy mill". I asked if the address on his licence was the address Mr. BILSKI resided and he said occasionally. Once the vehicle was loaded I cleared from the area. On a later date I attempted to follow up... with Mr. BILSKI at the address on his licence and I was advised that he did not live there.

12. A complaint was received on December 12, 2018 about a dog left unattended in a cold car, with little or no exercise, in unsanitary conditions. The complainant observed that the dog was tethered inside the car on a leash and had been seen licking water from inside the window; no food was visible. The car was described as a "disaster inside and out, filled with debris" including what was believed to be human feces. It appeared to be a "place of residence".
13. On December 13, 2018, APO Meyers attended the last known location of the appellant and found the dog inside the vehicle, tethered to a leash. The car was full of personal belongings and trash. No dog food was observed. She left a note on the windshield of the car but before leaving saw the appellant walking back. She raised her concerns about the dog's living conditions, and asked to see inside the car and view the dog.
14. Between December 14, 2018 and January 3, 2019, APO Meyers made a number of attempts to contact the appellant, eventually speaking with him and arranging for an inspection on January 5, 2019.
15. On January 5, 2019, APO Meyers met the appellant at the Vedder River Inn where she advised him of the issues with the dog living in his car and the need to clean the car, clear it of all hazards and exercise the dog more. APO Meyers issued a notice requiring the appellant to address certain issues to relieve distress.
16. On January 28, 2019, the society received a call from the Fraser Valley Regional District regarding an "abandoned" car with a dog inside, barking. The description of the car and dog matched the appellant but since the car was located outside of its jurisdiction, regional district staff could not respond.
17. On January 30, 2019, a society staff member went to the area where the car was last seen, but it was no longer there.
18. On February 19, 2019, the society's Abbotsford shelter reported a complaint about a man living in his car with a large dog. The complainant was concerned about the welfare of the dog and the level of exercise it was getting, and reported seeing feces in the car. APO Meyers attended later that day and again spoke to the appellant about sanitation and living conditions inside the car.
19. On February 20, 2019, APO Meyers returned to the area but the appellant, his vehicle and the dog had left.

20. On February 21, 2019, APO Meyers received a telephone call from the Chilliwack RCMP advising that officers were on their way to an individual in a car with a dog on Chilliwack Lake Road. They had called the society's shelter and were advised that APO Meyers was investigating this individual. A few minutes later, APO Meyers was contacted by the RCMP and advised that the appellant was being taken into custody and his vehicle was being impounded with the dog inside. She was asked to meet them at the impound lot in Chilliwack.
21. The RCMP took the appellant into custody and then took him to the hospital for assessment. They then arranged for the appellant to stay in a local shelter. With the assistance of ACO Winfield, APO Meyers sedated and contained the dog, and transferred her to Cheamview Veterinary Clinic for examination and treatment.
22. On February 22, 2019, the RCMP served the appellant with a notice of disposition advising the appellant of the dog's seizure and the process for disputing the seizure.

V The Review Decision

23. Initially, after reviewing the decision to take the dog into custody, the society was prepared to return her to the appellant's custody on conditions. After determining that the appellant had not met the conditions, it issued its review decision dated March 1, 2019 which states as follows:

On Monday February 25th you were sent an e-mail outlining the conditions of Marsha's return to your custody. The conditions included the following:

- You must confirm where your dog will be residing and if not with you, she must be in care or control of someone who is able to handle her behaviour;
- She must be provided with the appropriate standards of care, such as food, water, shelter, vet care, etc.

You were given a deadline to comply with these conditions by Friday February 28th, 2019. In that time, you have spoken with BC SPCA staff confirming that you had received the above-mentioned e-mail. In addition, you also confirmed that you had secured a place to stay with the Hope Transition Society. In following up on your housing arrangements it has come to my attention that you provided erroneous statements to the Transition society manager in regards to the temperament of your dog. Furthermore, you acted in a rude manner with the manager when she informed you of the specifics around the living arrangements, and subsequently rescinded your request for housing based on your behaviour. These actions lead me to believe that you will likely be dishonest in the future when discussing housing options and this is troubling.

Further to this, in corresponding with authorities, namely Hope Bylaw Services and Hope RCMP, it has also come to my attention that you have an extensive history of animal

welfare concerns, including those explained to you by SPCA Officer Meyers who issued you a notice of distress for keeping Marsha in unsafe and unsanitary living conditions.

On a final note, I wish to reference your dispute letter in which you state, I would assume as an attempt to show you are a competent dog owner, that “[Marsha] got treatment for the cut on her leg on February 21st.” This injury was caused by hazardous materials inside your vehicle where Marsha was living, and was treated by a veterinarian while in the custody of the BC SPCA, at the Society’s cost.

Based on all of the information that has been provided above, we will not be returning Marsha to your custody.

VI Grounds of Appeal

24. In his Notice of Appeal dated March 1, 2019, the appellant stated “I wish to appeal the decision made by the BCSPCA file no 288995 on March 1, 2019. They won’t be returning Marsha to my custody.”
25. In an appeal under the *PCAA*, the panel must determine whether or not the dog was abandoned or in distress when seized, and whether the dog should be returned to the appellant. To do so the panel must first evaluate the evidence. The panel has reviewed and considered all of the documents in the exhibits listed above and all the evidence provided during the hearing whether or not it is summarized in the following paragraphs.

VII Appellant’s Evidence

26. The appellant does not have a permanent address and moves from his car to various motels in the area between Chilliwack and Hope. At the time of the hearing, he was staying in a motel in Hope. He has health issues including tremors and a bad leg for which he has not received a diagnosis. He uses a cane for support.
27. The appellant has owned dogs for 30 or 40 years, likely as many as 10 different dogs and until Marsha, has never had a dog taken away from him. Marsha, is a Rottweiler mix that weighs between 80 and 90 pounds. He purchased her approximately two and a half years ago from a private owner in the Agassiz area that might have been running a “puppy mill”. She was a puppy, approximately six months old (perhaps a little younger).
28. The appellant testified that he has dealt with veterinarian clinics over the years and made sure that Marsha got her vaccinations as a puppy and followed up with booster shots.
29. The appellant described the past winter of 2018/2019 as a particularly bad one. Usually the appellant and Marsha would drive out to the countryside in the Chilliwack area where she could run around freely until she was tired. This recent winter, however, had a lot of snow and she wasn’t able to get her run in every day. The appellant described Marsha as a “spunky dog” that needs lots of space to run around.

30. Regarding the January 28, 2019 call received by the Fraser Valley Regional District of an abandoned car with a barking dog inside, the appellant says he was in the car with Marsha and was turning the car on and off to get heat for himself and Marsha.
31. As to the circumstances related to the seizure on February 21, 2019, the appellant said that he never abandoned Marsha and disputes evidence to the contrary. He was arrested by the RCMP because he didn't have a valid driver's license and was taken to the hospital for an assessment. After he was taken to the hospital, his car was seized with Marsha still in it. The appellant now has his learner's permit and has paid the fees to get his car out of impound.
32. The appellant conceded that the condition of his car at the time of seizure was "pretty bad". He had plans to throw out the garbage and clean it up later that day but the RCMP arrived before he could get to it. He disputes that Marsha had no food or water in the car. His evidence is that he always has extra food for Marsha and makes it a point to get milk for her every day and regularly feed her sardines. He says she was well fed.
33. The appellant acknowledges that Marsha received a cut on her leg from an open food can left in his car. He meant to throw out the food cans when he cleaned out the car and disposed of the garbage. When asked if he intended to provide veterinarian care for her cut foot, he stated he would have taken her to the vet but the police showed up first. He says he has sufficient financial resources – pension and investments – to look after Marsha.
34. With respect to the circumstances at the seizure, the appellant testified that when he arrived at the impound lot, Marsha was outside the gate. He said the society should have closed the gate before letting her out of the car. He asked the society to give Marsha more sedation but they could not as they said they were not vets. He was able to get the dog into the car using treats. He acknowledged that Marsha bit him "a little" when he was putting her in the car but denies hitting her with his cane. He stated that the society told him the dog had to be taken to the vet and they would pay for her treatment. The appellant agreed to go with the RCMP to the Salvation Army shelter; he said he hates it there and he still has the flu. He understood he could get Marsha back in a few days.
35. The appellant acknowledged that Marsha's size made her difficult to manage at times, but that she was very food motivated and he could get her into the car with food treats. With respect to the July 31, 2018 incident where Marsha escaped from his car and was running loose on the highway, he says "some lady took his dog suddenly out of the car." Marsha was captured by Hope bylaw officers and taken to Rivers Edge Kennel where the appellant picked her up two days later. He was required to pay a "vicious dog" fine before she could be released to him.

36. The appellant acknowledged being visited by APO Meyers in December 2018, and that there was a lot of debris and garbage in the car. He remembers being told to get Marsha's nails attended to. He admitted that he hadn't had a chance to clean out the car because of the recent cold spell. Regarding Marsha's nails, he said that Marsha is a big, feisty dog and it is hard for him to cut her nails. He suggested that he would take Marsha to a vet clinic, have her sedated and get her nails trimmed.
37. With respect to her behaviour, the appellant explained that Marsha doesn't respond well to people wearing uniforms. She prefers to be around people she knows. She will bark at people she doesn't know but not really snarl at them. He conceded that Marsha bit him during the seizure and he believes this was because she was in pain because of the cut on her leg. He does not consider Marsha to be a vicious dog; she was not 100% vicious "not like a pit bull", but maybe 15% vicious, and only when she is around people in uniform.
38. Although he understood that a pet owner's responsibility included providing such things as clean and sanitary living conditions, the appellant testified that the "timing situation and vicious wind chill", made it difficult for him to clean out his car. He stated he tried to clean his car once a month and that this was an unusual situation because of the winter weather. He is a good pet owner most of the time and it's not always possible, to clean his car especially in the winter.
39. The appellant was cross-examined and questioned by the panel on his plan should the dog be returned. He stated that he was looking for a new vehicle and had a lead through a mechanic in Mission. He wanted a van but not for the dog to live in. He stated he would like to live in the country, not the city, perhaps in a trailer. He had not talked to anyone about a trailer to live in. He acknowledged that he could not return to the Thunderbird shelter in Hope and was currently living day-to-day at a motel in Hope. The motel will not allow the dog to live with him. He acknowledged this is not a long-term solution and when he leaves this motel he will return to his car and find another motel.

VIII Respondent's Evidence

40. The panel has outlined the record of the society's prior interactions with the appellant above including numerous visits to his vehicle and attempts by the society to have the appellant address his dog's living conditions. Below we summarize the observations of the society's witnesses relating to the appellant's behaviour and the conditions under which the dog was living.

D. Decker

41. Ms Decker is the owner of River's Edge Kennel in Hope which, for the past 11 years, has been the Hope district's pound. She testified about her prior interactions with the appellant and his dog Marsha, as well as the appellant's deceased dog, Mars. She first

met the appellant a number of years ago when she was asked to do an assessment of Mars and his suitability for residing with the appellant in social housing. Mars was a good dog, good with people and with the appellant.

42. Ms Decker testified about an incident in the summer of 2018, where Marsha was found running loose and animal control officers brought her to the kennel. Given her temperament and size, the animal control officers could not put her into a standard kennel and resorted to using a long catch pole to control her. When animal control brought Marsha in, the officer appeared very frightened and seemed afraid of getting bitten. Marsha was extremely aggressive, trying to get at the officer with an open mouth, snarling and growling. She was placed in large room with two doors, so that she could be distracted at one door while food and water were provided through the second door.
43. Ms Decker indicated that she has housed and tended between 10 and 12 vicious dogs over the years; these dogs were muzzled when possible and usually after a day of careful attention, they could be taken out on a leash. Until Marsha, she said she has never had a dog she could not handle. She said she had Marsha for two days when the appellant arrived to pick her up. Normally, dog owners are not allowed to visit or retrieve their dogs directly from the pound. Dogs are picked up by animal control and turned over to the owner at city hall once the owner has paid all outstanding fines. In this case, the animal control officer was too afraid to take Marsha to city hall and instead had the appellant meet him at the kennel.
44. Ms Decker testified that, from a distance, it was obvious that the dog was excited to see the appellant. Given his difficulty walking and her size and excitement, the appellant had difficulty walking the dog to his car. The appellant fell, had difficulty getting up and struggled to hold on to the leash. As the appellant tried to get the dog into the car, Ms Decker observed that the backseat, where he was trying to place the dog, was full of junk and garbage. The appellant was working hard to get her into the car as fast as possible, and eventually resorted to hitting her with his cane to try and control her. Once in the car, the dog continued barking at the window, “going nuts”, “growling, like she was protecting the car”.
45. Ms Decker testified that prior to this encounter, all of her other interactions with the appellant had been positive.

L. Lathey

46. Ms Lathey is the society’s seized animal liaison administrator, a position that she has held for two years. Prior to this role, she was an APO for six years. She is responsible for managing seized animal dispute files which requires her to interact regularly with animal owners. She said that the society was prepared to return the dog to the appellant if he could secure adequate housing.

47. On February 25, 2019, she sent an email to the appellant outlining the conditions of return including that he could not return to living with the dog in his car and the need to ensure the dog was properly cared for and controlled:

... the BC SPCA is willing to return Marsha to your custody, however not to your vehicle.

You must confirm where your dog will be residing and if not with you, she must be in the care and control of someone who is able to handle her behaviour and who can provide her with the appropriate standards of care, such as food, water, shelter vet care, etc.

You will have until Friday, February 28th to provide the BC SPCA with a location of where Marsha will be residing and a BC SPCA staff member will need to inspect this property to ensure it is safe for the dog.

In addition, you will need to sign an agreement of care for Marsha, and the BC SPCA will waive all fees associated with her care in order for you to save your finances for her future care.

48. On February 26, 2019, she followed up with the appellant to inquire about his search for adequate housing. The appellant provided an address in Hope and indicated that he would be moving there in a couple of days. Ms Lathey asked the appellant for more information so that the society could send someone out to speak with staff to ensure this accommodation was suitable for the appellant and the dog.

49. A search of the address came back as the Hope Transition Society. She phoned APO Meyers who was able to drive out to Hope and speak with staff and inspect the property. APO Meyers reported back that she had spoken with the building manager in Hope and that the appellant was not allowed to reside at the motel with the dog but that she would attempt to aid him in finding somewhere to live. APO Meyers advised she would be speaking with Hope RCMP and animal control about any history with the appellant as he had allegedly resided in Hope previously.

50. Subsequently, APO Meyers called Ms Lathey and advised that the building manager indicated that:

She is unwilling to work with Mr. Bilski and is unwilling to let him rent any of her properties; When she told him he was not allowed to bring the dog in to the motel, he became rude; She stated she did not believe him about his dog being "friendly and quiet" and he stated that he was able to handle her; She stated she did not want to start out with him already lying.

51. Ms Lathey advised that since the appellant had not met the conditions for the return of the dog by the specified date, the society sent the March 1, 2019 letter denying the appellant's request for return of his dog. When asked by the panel about her previous

experience with transient pet owners, Ms Lathey acknowledged that the society does not have the resources to follow-up with everyone who enters into an agreement with the society. If a transient pet owner has a place to take their pet that is safe and secure, they are eligible to enter into an agreement.

APO C. Meyers

52. APO Meyers has been an auxiliary animal protection officer since November 2018. Prior to that time, she completed a practicum with the society from January to April 2018 and volunteered with the society until her appointment in November.
53. On December 12, 2018, responding to a complaint, APO Meyers observed a faded red Ambassador sedan in a parking lot with a dog barking, tethered to the inside of the car. The car was full of garbage and she observed soiled blankets and rotting fruit. Though the windows were fogged over, she saw no food or water in the vehicle for the dog and there was no person in or near the vicinity of the car.
54. Following lunch, APO Meyers saw an individual at the car and went to meet the appellant and his dog. In her conversation with the appellant, APO Meyers identified the concerns she had for the dog and the complaint received by the society. The appellant denied the complaint and indicated he was having difficulty finding a place to live that would accept pets. APO Meyers left her contact information with the appellant and arranged for a follow up meeting.
55. On January 5, 2019, APO Meyers visited the appellant at the Vedder River Inn. She was approached by staff members who expressed their concerns regarding the appellant's living conditions and that the dog did not get out for exercise. Staff indicated that the dog had defecated in the smoking area. APO Meyers talked with the appellant through the room door which he opened a crack and told him she needed to see the dog. When the door opened, the dog jumped at her and attempted to bite her on the arm. Despite the dog appearing to be healthy, APO Meyers issued a notice to the appellant to relieve distress as follows:
 - a. Provide necessary nail care.
 - b. Provide shelter that ensures protection from heat, cold and dampness appropriate to the protective outer coat and condition of the animal.
 - c. Provide shelter with sufficient space to allow the animal to turn freely and to easily stand, sit and lie down.
 - d. Provide opportunity for periodic exercise to maintain good health, including opportunity to be unfettered from a fixed area.
 - e. Ensure the area/pasture is kept free of injurious objects or other hazards.
56. APO Meyers discussed the notice with the appellant who said he would look after Marsha's nails on his own. She also discussed the need to remove hazards if the dog was living in the car and the need for adequate exercise.

57. On January 28, 2019, a new complaint was received from a passerby about an abandoned dog in a car on a service road; the car appeared either abandoned or lived in with lots of trash and garbage. The caller had not seen an individual in the car. As this complaint was outside her area, APO Meyers did not respond.
58. On February 19, 2019, APO Meyers was approached by an animal care person who had concerns about a person living in his car with a dog. The individual believed there were feces in the vehicle along with garbage and personal belongings. APO Meyers suspected this was the appellant's car. She arrived at the appellant's car around 10:00 am. She called out to him causing the dog to bark and growl. APO Meyers asked the appellant to exit the vehicle, which he declined to do indicating he was napping and tired of being hounded. APO Meyers observed that the dog appeared healthy but she was worried about her living conditions. It was snowing heavily with approximately one foot of snow on the ground. The appellant stated that since he was warm, the dog must be warm too. APO Meyers offered to board the dog in a shelter so that he could find shelter for himself and the appellant yelled at her to go away and come back the next day, and said that perhaps she should be finding shelter for him instead of the dog. The appellant then requested that APO Meyers call his doctor to cancel a medical appointment. APO Meyers left her contact information on the car window.
59. The next encounter with the appellant occurred on February 21, 2019 when APO Meyers received a call from the Chilliwack RCMP describing the vehicle and discussing concerns. She testified that she was contacted by RCMP later that same day and was advised that the appellant had been taken into custody, and the car had been impounded with the dog inside. RCMP requested that she meet them at the tow yard in Chilliwack.
60. Upon her arrival, APO Meyers met the driver who had towed the car to the yard. APO Meyers saw the dog in the rear of the car. She observed an adequate body condition (3:5), intact dew claws, natural ears and a laceration on the pads of the front and back right paws. The dog was wearing a collar and leash made of various types of ropes, collars (not around the neck, but tied as part of leash), and wire tied together.
61. APO Meyers indicated that the dog was brought to a wire crate and appeared to be steadily bleeding from two of her paws (right front and right back). The dog refused to enter the crate and began to act aggressively, attempting to bite the tow truck driver and APO Meyers. She used a catch pole but was still unable to crate the dog. After the dog was moved away from the crate and calmed, APO Meyers loosened the catch pole to allow the dog to calm further on the leash mechanism. Eventually, the dog slipped the leash mechanism over her head and began roaming the tow yard. APO Meyers requested additional assistance from Chilliwack SPCA shelter staff. The dog roamed the tow yard for approximately two hours, during which time she became increasingly aggressive.

62. APO Meyers testified that it was clear that alternative options were needed and shelter staff drove to Cheamview Veterinary Clinic to acquire sedatives to help calm the dog. The sedatives were administered orally, wrapped in food.
63. APO Meyers testified that she received a telephone call informing her that the appellant had been released from hospital and was on his way to the tow yard. When the appellant arrived, despite being sedated, the dog jumped on the appellant almost knocking him to the ground. The appellant began yelling at the dog and surrounding individuals and after multiple attempts, got the dog into his vehicle. Once in the car, the dog began to bark and bit the appellant.
64. APO Meyers observed the appellant waving his cane as though he was going to hit the dog. A society employee warned the appellant to put the cane down and close the door. The appellant said the dog was only reacting like this due to her being in pain from her injuries. APO Meyers could not tell if the dog injured the appellant. During this incident, the appellant was yelling at her and the police stating the whole encounter was their fault saying words to the effect “this is why I always run from you. I enjoy hiding from you, and I will do it again. After today, you’ll never see me again,”
65. APO Meyer testified that the RCMP arranged for the appellant to stay in a local shelter and the dog could not go with him. The appellant agreed to go with the RCMP to the shelter. With assistance of ACO Winfield, APO Meyers contained the dog and transferred her to Cheamview Veterinary Clinic for treatment to her cut foot, after which she was taken to Chilliwack SPCA branch. The next day, the RCMP served the appellant with the 4-day notice of disposition.
66. APO Meyers’ evidence was that inside the appellant’s car were empty tin cans, a very dirty dog blanket and rotting food and feces. There was a very strong odour. A large camping cooler and much of the rear seat were covered in blood. No water was seen and the seatbelts were ripped and chewed and part of the metal seat frame was exposed.
67. APO Meyer’s evidence is that the dog bit her three times throughout the encounter, on her right middle finger, on her right hand between her pinky finger and wrist and on her right elbow leaving light bruising. No medical attention was needed
68. APO Meyers testified that she has concerns that if the appellant was to lose his car and have no shelter, he and the dog would be on the street. She is worried about the risk to the public because of the dog’s negative behaviours. APO Meyers said she believes that the appellant is unable to properly contain and manage the dog because of her large size, aggression and his disability; the appellant has been uncooperative with the society in the past and has a tendency to change location, with no fixed address and no means of contact. All historical observations and the recent incident leave APO Meyers with the belief that the dog is likely a danger to the public.

**IX Analysis and Decision
Seizure**

69. As the society points out, this case is unique in that no search warrant was obtained or required as the RCMP impounded the appellant's vehicle in which the dog was living. The RCMP asked the society to remove the dog and take custody of her as the appellant had been arrested for driving without a license. The appellant arrived on scene during the seizure and consented to his dog being taken for veterinary treatment and being transported to a shelter. It was the appellant's understanding that the dog would be returned in a few days. The society issued a notice of disposition on the grounds that the dog had been "abandoned".

70. The definition of abandonment is found in section 10.1 of the *PCAA*:

10.1 (1) In this section, "abandoned animal" includes an animal that

- (a) is apparently ownerless,
 - (b) is found straying,
 - (c) is found in a rental unit after expiry of the tenancy agreement in respect of the rental unit, or
 - (d) if a person agreed to care for the animal, is not retrieved from that person within 4 days following the end of that agreement.
- (2) If an authorized agent is of the opinion that an animal is an abandoned animal, the authorized agent may take custody of the animal and arrange for food, water, shelter, care and veterinary treatment for it.

71. We find that at the time of the seizure, the dog was effectively abandoned. While we understand that the appellant had no intention of abandoning his dog permanently, the fact that he was living in his car and did not have a valid driver's license resulted in him being taken into custody by the RCMP and the vehicle, including the dog, being towed to the impound lot. The appellant was then taken to a shelter which did not allow dogs and the dog was taken for medical treatment. In these circumstances, it was reasonable for the RCMP to request assistance of the society to take the dog into custody, even if only temporarily, to ensure the short-term well-being of the dog pending the results of their investigation. In this regard, this case has similarities to the earlier decision of *A.B. v British Columbia Society for Prevention of Cruelty to Animals*, (BCFIRB, August 9, 2013).

72. Having found that the dog was properly taken into custody, the panel turns now to consider whether it is in the best interests of the dog to be returned to the appellant.

Return of the Dog

73. The courts have considered the legislative framework provided by the *PCAA*. In *Eliason v SPCA*, 2004 BCSC 1773 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.

74. In *Brown v BC SPCA*, [1999] B.C.J. No. 1464 (S.C.) the court explained:

The goal and purpose of the act is explicit in its title. It would be unreasonable, in my view, to interpret the Act as the Plaintiff's counsel suggests. In the interest of preventing a recurrence of the cause or causes leading to the animal being in the distress in the first place, the court must be satisfied that if the animal is returned to its owner, it will remain [in] the good condition in which it was released into its owner's care.

75. The *PCAA* (part 2.1) also establishes the standards of care for animals and establishes a duty on those responsible for the animals to ensure those standards are met:

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

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

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

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

76. The definition of “distress” provides:

1 (2) For the purposes of this Act, an animal is in distress if it is

(a) deprived of adequate food, water, shelter, ventilation, light, space, exercise, care or veterinary treatment,

(a.1) kept in conditions that are unsanitary,

(a.2) not protected from excessive heat or cold,

(b) injured, sick, in pain or suffering, or

(c) abused or neglected.

77. In coming to our conclusion about the wisdom of returning the dog to the appellant, we have considered the dog's living conditions at the time of seizure and the likelihood that those conditions will change if the dog is returned. We have approached our assessment of the dog's living conditions within the meaning of the *PCAA*, not from the perspective

of what is the ideal. Rather, we have considered whether the living circumstances here fall below the minimum standard required to prevent harm or a foreseeable risk of harm.

78. On this point, the appellant argued that the dog was not in distress when seized. In his view, Marsha is a “one-man dog” and “any issues or concerns that the society might have with Marsha are their own fault”. She is fed and cared for as well as he is able. He believes that she must miss him terribly, as he does her. Other than the cut on her leg which occurred at the time of seizure, he said there was nothing medically wrong with Marsha. The society’s primary focus was the dog’s living conditions not her state of health.
79. The society readily acknowledges that it is not relying on veterinary evidence to support its decision not to return the dog. It does observe however, that it obtained veterinary treatment for the cut on the dog’s leg from a tin can following the seizure. It argues that the decision not to return the dog was made because the appellant failed to meet the conditions of return, namely to confirm where the dog would be residing as the society was not prepared to return the dog to reside in a car. The society wanted assurance that if the dog was not residing with the appellant, she would be in the care or control of someone able to handle her behaviour and be provided with the appropriate standards of care, such as food, water, shelter, and veterinary care. The appellant failed to satisfy these conditions and as such, the dog was not returned.
80. The appellant finds himself in a difficult position; he is elderly with a physical disability. At the time of the hearing, he was staying at a motel. In listening to the appellant, we tried hard to find evidence that the dog’s living condition would change if returned. We heard very little in the nature of a plan to improve the living conditions of the dog. The appellant has yet to secure suitable accommodation for himself and his dog. We heard indefinite plans about purchasing a van or possibly finding a trailer but neither has come to fruition.
81. While the appellant clearly loves his dog and does his best to look after her, the reality is that the dog is a 90 lb. Rottweiler mix which he describes as feisty and spunky. Others describe the dog as aggressive or vicious. The dog’s nature has made it difficult for the appellant to find appropriate shelter resulting in him living for long periods of time in his car with short stints in motels. His living situation is precarious at best and as the current situation demonstrates, it is not a long-term solution for either the appellant or his dog.
82. APO Meyers’ evidence is that at the time of seizure, the dog’s living conditions met the definition of “distress” as the dog was deprived of adequate food, water, light, space, exercise and care. She also concluded that living conditions were unsanitary due to the presence of rotten food, garbage and fecal matter in the car. Her evidence is that the dog’s living conditions did not significantly improve over the months she was in contact with the appellant. On occasion, the dog has been found unattended in the car.

83. We acknowledge the appellant's evidence that he would drive the dog to Chilliwack to run around but he agreed that this did not occur regularly over the winter. The panel concludes that over a period of months, the dog was repeatedly inadequately housed as the car did not allow for proper movement or function for a dog of her size.
84. The appellant's evidence is that the dog was well fed, including regular feedings of sardines and milk. While we do not dispute this evidence, we also heard evidence that at times, the dog did not have access to food or water when found in the car. There was also a risk of contamination by urine or fecal matter. The appellant does not appear to dispute that on occasion the dog defecated in the car; his evidence was that "most of the time, the dog did her business outside".
85. Based on the evidence before us, the panel is not prepared to make a finding of distress on the basis that the dog was deprived of food. The dog appeared well-nourished with a good body score. In addition, we do not find any evidence that the dog was deprived of light. The allegation of lack of care relates to untrimmed nails, however, we do not find that the state of the dog's nails was sufficient to support a finding of distress.
86. However, there is sufficient evidence to conclude that the dog was deprived of adequate water, shelter, ventilation, space, and exercise and from time to time, due to the cramped living conditions, the dog's living conditions were unsanitary. In our view, it is the cramped nature of housing a 90 lb dog in a car for long periods of time that is the most concerning issue. Although, the appellant tried to make the car comfortable and would at times drive places to get the dog exercise, we conclude that the car simply did not provide adequate shelter or sufficient space for a large dog over a prolonged period of time. The fact that the dog cut its leg on a tin can left in the car is a small indication of the potential for harm of living in such cramped quarters. The panel was left wondering whether the aggressive nature of the dog may also be in part attributable to the inadequacy of its living conditions.
87. It is very clear that those people who have come into contact with the appellant and the dog including members of the public, society employees, the regional district, the RCMP, motel owners and shelter operators held a common view; namely that the appellant was not able to look after his dog because of his physical limitations, his living conditions and the aggressive nature of the dog.
88. The appellant describes himself as someone who is trying hard to find a place to live that is adequate for himself and his dog. He believes that he is a good dog owner and describes himself as co-operative. He believes he looks after his dog better than the greater society looks after him; he feels picked on.
89. In our view, the appellant has not been cooperative with the society. Instead, the evidence is that he intentionally misled the society by indicating he had secured housing for

himself and the dog. He misled the housing manager by indicating that his dog was friendly and quiet. As a result of the misrepresentations, the appellant did not secure housing. At the time of the hearing, the appellant was staying in a motel with no clear plan of where he would live if his dog was returned to him.

90. The society's position is that the appellant never intended to meet the standard of care for the dog despite his obligation to do so. APO Meyers had the most experience working with the appellant and her view is that the appellant moved his vehicle to avoid dealing with her concerns about his dog. She felt he was playing a game.
91. In our view, the appellant lacks insight into the implications of his dog living in a car with him long term. He does not readily acknowledge the aggressive nature of his dog or the fact that at times, he has had difficulty controlling her. This does not give the panel much confidence that should the dog be returned to the appellant, he would adopt any different approach to her care. The appellant provided no evidence of any support from other persons to assist with the care of the dog, if he should need such support. Given what appears to be the appellant's chronic health issues, this is a concern.
92. In the panel's view, the appellant's history of lack of response to the directions of the society on numerous occasions, demonstrates that he is either unable or unwilling to meet the standard of care required of a dog owner. The responsibility to provide adequate living conditions for the dog continues no matter what may befall the appellant. If circumstances become too difficult, it remains the appellant's responsibility to make timely and suitable arrangements for the care of his dog.
93. Based on all the evidence before the panel and despite the appellant's best intentions, we have found no basis upon which to conclude that the appellant can change his living conditions to warrant the return of the dog; his past actions demonstrate otherwise. The persistence of the dog's substandard living conditions over many months speak for themselves.

X Order

94. The panel has concluded that the dog at issue on this appeal was abandoned and as such was taken into custody to receive veterinary care. The panel is satisfied that it is likely and foreseeable that should the dog be returned, her living conditions would not improve, and that she would return to situations of distress. Consequently, and pursuant to s. 20.6(b) of the *PCAA*, the society is permitted, in its discretion, to destroy, sell, or otherwise dispose of the animal.

XI Costs

95. The society did not make a claim for costs of care pursuant to s. 20 of the *PCAA*. As such, the panel makes no order as to costs.

Dated at Victoria, British Columbia this 10th day of April, 2019.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Peter Donkers, Chair and Presiding Member



Mary O'Callaghan, Member



Dennis Lapierre, Member