

IN THE MATTER OF THE *PREVENTION OF CRUELTY TO ANIMALS ACT*,
R.S.B.C. 1996, c. 372
ON APPEAL FROM A REVIEW DECISION OF THE BC SOCIETY FOR THE
PREVENTION OF CRUELTY TO ANIMALS CONCERNING THE THIRD PARTY
SURRENDER OF ONE DOG

BETWEEN:

K.P.

APPELLANT

AND:

BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS

RESPONDENT

DECISION

APPEARANCES:

For the British Columbia Farm Industry
Review Board:

Harveen Thauli, Presiding Member

For the Appellant:

K.P.

For the Respondent:

Christopher Rhone, Counsel

Date of Hearing:

September 29, 2022

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 **Act**) related to the third party surrender of a female Pitbull cross dog, named Elly (**Elly**). Elly belonged to the Appellant, K.P. The manager of the Coast Mental Health facility in the Lower Mainland, BC (the **Facility**), where the Appellant currently rents a suite, surrendered Elly due to the Appellant's apparent abandonment of Elly.
2. The Appellant is appealing the August 26, 2022 review decision (the **Review Decision**) issued under s. 20.2(4)(b) of the *Act* by Marcie Moriarty, Chief Prevention and Enforcement Officer, of the British Columbia Society for the Prevention of Cruelty to Animals (the **Society**).
3. Section 20.6 of the *Act* 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 permit the Society, in its discretion, to destroy, sell or otherwise dispose of the animal. The Appellant in this case is seeking Elly's return.
4. On September 29, 2022, a BCFIRB hearing panel (the **Panel**) held a hearing via teleconference. The hearing was recorded.
5. The Appellant was not represented by counsel. The Appellant did not submit a witness list before the hearing. The Panel permitted the Appellant to call witnesses at the hearing.
6. The Society was represented by counsel and called an Animal Protection Officer (**APO**) and an Animal Control Officer (**ACO**) as well as one other witness.

II. Decision Summary

7. For the reasons explained in this decision, the Panel has decided not to return Elly to the Appellant. Pursuant to section 20.6(b) of the *Act*, the Society is permitted, in its discretion, to destroy, sell or otherwise dispose of Elly, with the obvious hope and expectation that Elly will be adopted.
8. The Panel has further decided that the Appellant is liable to the Society for the full amount of costs claimed by the Society for Elly's care, while in custody, of \$123.73.

III. Material Admitted on this Appeal

9. The Panel identified all the documents received by BCFIRB in advance of the hearing as exhibits. The record comprises Exhibits 1 to 14 and is attached as Appendix A to this decision.

IV. History Leading Up to the Surrender

10. The Society submitted records indicating that complaints to the Society about the Appellant's treatment of puppies in her care began in July 2008. This decision will only discuss events that took place in March 2022 and those that led to the Review Decision given that the Appellant has lived in the Facility since January 2022 and the previous history is not otherwise relevant to this decision.
11. The Society received a complaint on July 10, 2022 about two new puppies in the Appellant's care and living in unsanitary and unsafe conditions. The Society subsequently closed that file because neither the puppies nor the Appellant could be located.

Events of March 2022

12. On March 19, 2022 at approximately 10:15 am, a mental health worker at the Facility contacted the Society to express her concern about two Pitbull puppies that were living with the Appellant in her suite. One of the puppies had ingested narcotics and had required NarCan.
13. On the same day at approximately 10:30 am, APO Amanda McRae responded to the call and spoke to the Appellant about the concerns. APO McRae noted that the Appellant took about five minutes to clear a path so that she could open the front door to her suite. APO McRae noticed items stacked from floor to ceiling, including garbage, furniture and drug paraphernalia such as glass pipes, tinfoil, used needles and multiple cans of butane.
14. The Appellant stated she was the puppies' caretaker. She claimed that the puppy picked up the drugs randomly while they were walking in the park. She confirmed using NarCan on the puppy and thought it was a "*waste of money*" to have the puppy examined by a veterinarian.
15. The Appellant apparently joked with facility staff stating that: "*It's a good thing the windows open in my room or these dogs would be really high.*"
16. The Appellant stated that she planned to buy vaccinations online and inject the puppies herself.
17. When APO McRae asked where the puppies had been staying, the Appellant advised that they had been staying in her room and in multiple other residences in the Facility. The Appellant claimed one puppy belonged to a couple and the other belonged to her husband, V. who was in the hospital at that time. APO McRae offered emergency board to the Appellant until her husband was discharged from the hospital but the Appellant declined.

18. APO McRae asked to see the puppies but the Appellant stated they were not with her and were staying at a “*buddy’s place*”. The Appellant told APO McRae that she would contact her friend and asked APO McRae to meet her downstairs in the Facility’s staff office.
19. APO McRae issued a Society distress notice to the Appellant, which required the Appellant to:
 - ensure food and water containers are clean and disinfected and located as to avoid contamination by excreta;
 - provide necessary veterinary care when an animal exhibits signs of injury, pain, illness or suffering that require medical attention;
 - ensure the animals are not confined to an enclosed space without adequate ventilation;
 - provide shelter with sufficient room to allow the animals to turn freely and easily sit, stand and lie down;
 - ensure the living area is cleaned and sanitized regularly;
 - provide an opportunity for periodic exercise;
 - ensure the area is free from injurious objects or other hazards; and
 - keep the animals away from toxic substances.
20. While APO McRae waited with staff in the staff office, an owner of one of the puppies came to advise APO McRae that despite paying \$400 for the puppy, she wanted to surrender it after hearing about the drug incident. APO McRae informed this owner that she was still trying to locate the puppies. Meanwhile, APO McRae and staff members watched the Appellant run from suite to suite on video.
21. APO McRae left the Facility at approximately 12:30pm but returned at 1:35pm after a Facility staff member contacted her to state that the puppies were being dropped out of a window by a resident to the Appellant who was waiting below. The Appellant then ran across the street to another suite and gave the puppies to the resident named M.
22. APO McRae contacted the RCMP for assistance. A RCMP Constable gained entry to the building where M. lived, knocked on the door and identified himself. M. confirmed he had two puppies that he was taking care of for the Appellant, whom he believed to be the owner. He was not aware that one puppy had ingested drugs. He then stated that the Appellant was “*an idiot*” and should not own animals. M. then surrendered the puppies to APO McRae.
23. Dr. Adrian Walton, who happened to be at the scene to provide assistance when events unfolded, subsequently examined the puppies at Dewdney Animal Hospital. He stated the puppies were stable and could be taken to the shelter.

24. On March 25, 2022, APO McRae spoke to V. He stated that “*it was a mistake*” to let the Appellant take care of the puppies while he was in hospital and advised that he did not want them returned to him. He wanted the puppies to be adopted to good homes.

Events of August 2022

25. On August 14, 2022, a Facility staff member contacted the Society to advise that the RCMP had apprehended the Appellant under the *Mental Health Act* because the Appellant had threatened suicide. Since the Appellant was “*putting up a fight*” while being apprehended, the staff member did not go near her suite. The police had escorted the Appellant in handcuffs to the hospital.
26. Since Elly was still in the Appellant’s suite, the Facility’s manager retrieved her and brought her to the staff office. The staff did not know how long the Appellant would be detained at the hospital.
27. ACO Keith Griffith responded to the call. At the Facility, Elly was surrendered to him. While ACO Griffith was filling out paperwork, the Appellant returned to the Facility with the RCMP. The Appellant asked ACO Griffith not to take Elly. The RCMP, however, suggested the Appellant was still unstable and could not take care of Elly.
28. ACO Griffith contacted his boss to find out how to proceed given the Appellant was on site. His boss told him to check on the state of the Appellant’s suite. The Appellant agreed to let ACO Griffith to see her suite.
29. ACO Griffith was only able to open the Appellant’s suite door about one foot. He observed severe hoarding in the suite to such an extent that the mess spilt out into the hallway. As a result, he decided to take Elly, who was already in his custody, with him as it was clear that the suite was not a safe or suitable habitation for Elly.
30. Before leaving the Facility, ACO Griffith provided the Appellant with a Notice of Disposition (**NOD**), which stated that Elly had been removed pursuant to section 10.1 of the *Act* as she was found to have been abandoned as defined by the *Act*. The NOD gave the Appellant four days to dispute Elly’s removal in writing.

V. Review Decision

31. On August 26, 2022, Ms. Moriarty emailed the Review Decision to the Appellant. In this decision, she identified that her role was to review the evidence and decide whether it would be in Elly’s best interests to return her to the Appellant.

32. Ms. Moriarty reviewed the following evidence:
- the Inspection Follow-up Details,
 - the NOD,
 - the historical file documents,
 - one veterinary record, and
 - the Appellant's various email submissions.
33. Ms. Moriarty expressed her concern about returning Elly to the Appellant, as follows:

[...] However, I have great concerns in returning Elly to your care. Primarily being that you are not permitted large dogs in your residence, in addition to the unsanitary and unsafe living conditions, and the statements you made regarding veterinary care in the previous file. Unfortunately, I have nothing before me that makes me believe it is in Elly's best interest to be returned to your care.

34. Ms. Moriarty concluded that it would not be in Elly's best interests to return her to the Appellant.

VI. Key Facts and Evidence

35. In this appeal, the Panel must determine whether Elly was abandoned as defined by the *Act* and if she should be returned to the Appellant. Below is a summary of the relevant and material facts and evidence based on the parties' written submissions and evidence presented during the hearing. Although the Panel has fully considered all the facts and evidence in this appeal, the Panel refers only to the facts and evidence it considers necessary to explain its reasoning in this decision.

The Appellant's Evidence

36. The Appellant did not provide any written submissions nor did she provide a witness list. Despite efforts by BCFIRB staff to contact the Appellant, the Appellant never returned their calls or emails. It was uncertain whether the Appellant would attend the hearing.
37. At the start of the hearing, the Appellant was not present. The Panel asked BCFIRB staff to try contacting the Appellant to find out if she intended to participate in the hearing. The Panel adjourned the hearing for approximately ten minutes.
38. On return, BCFIRB staff had located the Appellant who wished to attend the hearing and give evidence.

The Appellant

39. During the Appellant's testimony, she confirmed many of the events described in section IV above. The Appellant added her perspective as follows:
- On August 14, 2022, the Appellant acknowledged making a comment about suicide but claimed she was not suicidal.
 - She told the RCMP that she had just taken Elly on a walk and fed her.
 - She told the Facility staff that she would be back in an hour and she did not want anyone touching Elly.
 - When she returned to the Facility from the hospital with the RCMP, she saw that ACO Griffith had Elly.
 - She acknowledged that her room was in disarray but had not made any improvements.
 - She blamed the Facility staff for not helping her to clean up her suite. She stated that the manager would not allow her to continue using a storage closet or give her a bigger suite.
 - She previously volunteered at the Society in Langley, so she found this situation difficult to deal with given the amount of time she spent volunteering.
 - She stated that the Facility's building is not safe for her.
40. During cross-examination, the Appellant responded as follows:
- She confirmed that Elly was born on March 25, 2022 and that she has had Elly since the end of July 2022. She further confirmed that Elly was the only dog she currently owned.
 - She claimed that when APO McRae came to see her on March 19, 2022, her suite was a "mess" because the items that were previously in a storage closet were now in her suite. She continues to reside in the same suite.
 - She stated that she had drug paraphernalia such as the needles in her suite because she did outreach work.
 - She confirmed threatening suicide on August 14, 2022.
 - She stated that she had spent approximately two hours at the hospital.
 - She claimed ACO Griffith stated Elly was abandoned but he would let Elly stay with her if her suite was not so cluttered.
 - She confirmed receiving the NOD and filing a dispute.
41. The Appellant confirmed to the Panel that she has had a problem with methamphetamines but was recently prescribed Ritalin to help her with her addiction.
42. Although the Appellant did not provide a witness list, she asked the Panel if she could call two witnesses. The Society did not object and the Panel gave her permission to call her witnesses.

J.B.

43. The Appellant's first witness was J.B., who testified as follows:
- She was walking upstairs as the Appellant was being escorted downstairs by the RCMP on August 14, 2022.
 - She asked the Facility's manager and a RCMP officer if she could retrieve Elly from the Appellant's suite. They told her that Elly would be fine and the Appellant would be returning soon.
 - She later learned that the manager had taken Elly from the Appellant's suite.
 - The following day, she spoke to a different police officer who was at the Facility for an unrelated matter. This officer recommended that the Appellant start an investigation on the manager for entering the Appellant's suite without permission.
44. During cross-examination, J.B. confirmed that she did not see anyone from the Society at the Facility.

D.T.

45. The Appellant's next witness was D.T., who testified after APO McRae. He testified that on March 19, 2022, he passed the two puppies "hand to hand" through a window to the Appellant who was standing below outside. He claimed the distance was four feet.
46. During cross-examination, he testified that it was faster to pass the puppies to the Appellant through the window instead of walking them out the front door because it was "*a quicker way to get them out of the building*".

E.W.

47. At the close of the Society's case, the Appellant asked why the Facility's manager, E.W. was not called as a witness. The Panel advised the Appellant that it was her responsibility to contact witnesses she wanted to testify on her behalf. Despite this, the Panel adjourned the hearing and asked BCFIRB staff to contact E.W. to determine whether she would testify at this hearing. E.W. agreed to testify. The Society did not have any objections to E.W. being called as a witness.
48. The Panel asked E.W. to summarize the events of August 14, 2022. E.W. testified as follows:
- She advised that the Appellant was very upset with receiving a Notice of Eviction. The Appellant threatened suicide, which the Appellant stated would be on her [E.W.'s] conscious for evicting the Appellant.
 - Staff was on the phone on the non-emergency line to request a wellness check when another staff member advised that the Appellant was threatening to slit her throat. Staff then phoned 911. When the RCMP arrived, the Appellant was detained under the *Mental Health Act*.

- She asked the Appellant whether somebody was available to watch Elly, but the Appellant did not respond.
- She was not present for the discussion but overheard the Appellant while she was in the hallway, being escorted out of the building whether J.B. could watch Elly. She advised, however, that J.B. already had a dog and only one dog was allowed in a suite. Therefore, she would not have approved of J.B. as a caregiver for Elly in any event.
- She was concerned about Elly's wellbeing because she was aware the Appellant's suite was full of stacks of objects. She has authority to enter a suite if there are concerns for an animal.
- She tried to open the door to the Appellant's suite but she had difficulty because the suite was so cluttered that objects were blocking the door. She entered the room as much as she could and found Elly trapped in a small space behind the door. She managed to pull Elly out of the space.
- She believed the Appellant would be admitted to the hospital for 24 to 48 hours, so the Society was then contacted.
- The Appellant returned to the Facility with the RCMP because she was deemed not a threat to herself. ACO Griffith was filling out the paperwork for Elly when the Appellant arrived.
- ACO Griffith checked the state of the Appellant's suite and deemed it unsafe for Elly.
- She confirmed the Appellant received the Notice of Eviction because her suite did not meet fire safety standards and had not for a long time. It was so cluttered that if there is a fire in her suite, the sprinkler system would not be able to contain it to her suite only. The Appellant had also threatened and been aggressive towards staff.
- She advised that if a resident at the Facility would like to have a pet, that person must fill out an application form, which then must be approved. The Appellant did not fill out any form but if she had, the Appellant's application would have been rejected because of the unsanitary condition of her suite.

49. During questioning by the Appellant, E.W. answered as follows:

- She did not recall the Appellant telling her to stay out of her suite.
- Staff has tried to help the Appellant downsize her possessions but the Appellant has refused their help. She did not have permission to use a storage closet across from her suite. Staff asked the Appellant to remove her belongings. After several months, staff removed them for her and left them in the hallway. The Appellant's suite was already cluttered before she stored these additional belongings in her suite.
- The Appellant did not obtain approval for a storage unit, so she was served with notice to remove it. When she failed to do so, staff had it removed from the Facility's property.

The Society's Evidence

Anonymous Witness

50. The Society submitted a witness statement marked as Exhibit 13. It was written by a Facility staff member who wished to remain anonymous because she continues to work with the Appellant and wanted to avoid any potential backlash that her statement may cause.
51. The witness confirmed that the Appellant is aware of the pet application process but the Appellant has stated on numerous occasions that she “*does not care*”.
52. The witness further confirmed that tenants are allowed only one dog that can be no higher than 18 inches, must be neutered or spayed, and must not be of a breed that is considered dangerous such as Pitbulls.
53. The witness wrote the following:

I have not witnessed K.P. ever being physically aggressive with her animal, however, the dog was not adequately being trained on a proper schedule for a puppy. There were times where the dog was only seen being taken outside to pee on 1 occasion during my 8-hour shift, or other times not at all. The dog was being trained to use puppy pee pads as opposed to being trained to use the washroom outside on a proper schedule. The dog did not get proper walks, nor had K.P. attempted to seek veterinary care for Ellie, despite the dog being infested with fleas. To my knowledge, the dog involved in this case has also not been vaccinated properly, which puts the dog at risk and same with the other animals in the building. A few months ago, K.P. had two other puppies which were also voluntarily surrendered to the SPCA by K.P.'s friend. The reason for this was an ordeal with the SPCA in which they were responding to an animal cruelty report because one of those puppies ingested narcotics and was given Narcan (Naloxone) by K.P. and her friends at the scene. The dog was not taken to the vet after, and no veterinary care was ever sought for the animal who overdosed. I fear that her current seized dog will be subject to the same potential unfortunate circumstances. Additionally, K.P. has an excess of items in her suite [REDACTED], which makes it unsafe and inhabitable for an animal, especially a puppy which needs space to run around and play. K.P. also does not have a proper sleeping schedule or routine in which a puppy needs in order to thrive and grow in their environment. Finally, the building in which K.P. lives is harm reduction focused which means the dog can be exposed to illicit substances from second hand inhalation, or licking substances off of the floor as residents are permitted to use substances in their suites.

ACO Amanda McRae

54. The Society called ACO McRae as a witness to testify about the events that took place in March 2022. She is employed by the Society and attended at the Facility on March 19, 2022.
55. During her testimony, ACO McRae confirmed what has already been described in Section IV above, Events of March 2022. She was concerned about the amount of

clutter and garbage in the Appellant's suite, which included bins, boxes and bike parts in addition to those objects described in paragraph 13 above. She also did not see any dog food or dog toys in the Appellant's suite.

56. During cross-examination, ACO McRae recalled the Appellant stating that she would probably kill herself if her puppies were taken away. ACO McRae offered to call an ambulance for the Appellant.
57. In answer to a Panel question, ACO McRae watched a resident (D.T.) drop the puppies 6 to 8 feet from the window to the Appellant on the facility's video footage.

L.S.

58. The Society called L.S. as a witness. L.S. is employed by Coast Mental Health and has known the Appellant for almost two years.
59. During her direct examination, L.S. confirmed the events that took place on March 19 and August 14, 2022, which are described in Section IV above, Events Leading to the Surrender. She provided the following additional information during her testimony:
 - The Facility suites are very small and between 100 to 150 square feet and the building has many cameras.
 - The Appellant has a "*lot of stuff*" in her suite and there is not "*much room for even her in there or any dogs unfortunately*".
 - On August 14, 2022, the Appellant did not respond to E.W. when E.W. asked her twice who would take Elly. The staff did not know how long the Appellant would be at the hospital.
 - She told ACO Griffith that the Appellant's suite was not safe for Elly.
60. During cross-examination, L.S. responded as follows:
 - The air in the Facility is circulated in the hallways but not in the suites. She confirmed the air quality is not the best in the Facility's building.
 - In response to whether she saw J.B. running down the hallway looking for Elly, she stated that no one ran through the building or came to the staff office. She also confirmed that no one saw the incident of the Appellant being taken away by the RCMP.

ACO Keith Griffith

61. The Society called ACO Griffith as a witness to testify about the events that took place in August 2022. He is employed by the Society and attended the call on August 14, 2022.
62. During his testimony, ACO Griffith confirmed what has already been described in Section IV above, Events of August 2022. He was concerned about the state of the Appellant's suite and described it as having plastic totes from floor to ceiling,

furniture, an air conditioning unit, bike parts and bicycles hanging from the ceiling. The suite also smelled like garbage.

63. During cross-examination, ACO Griffith responded as follows:
- When someone abandons a dog, there is no waiting period that must pass before it is considered abandoned. The Appellant had to follow the necessary redemption procedures before Elly could be returned to her.
 - He advised that in his opinion the Appellant's suite is not safe for the Appellant.

VII. Legislative Framework

64. Section 10.1 of the *Act* sets out the role for the Society in the event that an animal is determined to be abandoned:

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.

10.1 (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.

65. Part 2.1 of the *Act* 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.

66. 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.

67. Section 20 of the *Act* states:

- 20** (1) The owner of an animal taken into custody or destroyed under this Act is liable to the society for the reasonable costs incurred by the society under this Act with respect to the animal.
- (2) The society may require the owner to pay all or part of the costs, with or without conditions, for which he or she is liable under subsection (1) before returning the animal.
- (3) Subject to subsection (4), the society may retain the proceeds of a sale or other disposition of an animal under section 17 or 18.
- (4) If the proceeds of a sale or other disposition exceed the costs referred to in subsection (1), the owner of the animal may, within 6 months of the date the animal was taken into custody, claim the balance from the society.
- (5) Payment of costs under subsection (2) of this section does not prevent an appeal under section 20.3.

68. Section 20.6 of the *Act* states:

- 20.6** On hearing an appeal in respect of an animal, the board may do one or more of the following:
- (a) require the society to 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 board considers necessary to maintain the well-being of that animal;
- (b) permit the society, in the society's discretion, to destroy, sell or otherwise dispose of the animal;
- (c) 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).

VIII. Analysis and Decision

69. The two questions this Panel must decide are whether Elly was abandoned at the time she was surrendered by a third party and if it is in Elly's best interests to return her to the Appellant.

Abandoned

70. The Tribunal recently discussed section 10.1 of the *Act* in *G.G. v. BCSPCA* (BC Farm Industry Review Board, August 24, 2022). In that case, the Tribunal relied upon *HL v BCSPCA*, June 1, 2015, which explained that "abandonment" under the *Act* is determined objectively, and that the owner's intention to abandon is irrelevant to the determination:

[46] Section 10.1(1)(a) of the Act states that an "abandoned animal" includes an animal that that is apparently ownerless. If an authorized agent is of the opinion that an animal

is an abandoned animal, Section 10.1(2) provides that the authorized agent may take custody of the animal and arrange for food, water, shelter, care and veterinary treatment for it.

[47] In coming to its decision, the Panel is also guided by the following passage from HL v BCSPCA, June 1, 2015 where at paragraphs 105 and 106 that Panel held:

105. ...The definition of “abandoned” is inclusive and this differs from the exhaustive way in which the term “distress” is defined...

106. The use of the word “includes” shows that the legislature wisely recognized that other situations might well arise where an animal has been abandoned for the purposes of the PCAA. The examples given in the definition are of course of great assistance as they both define particular situations and also inform the larger meaning of the word. In the latter regard, they reflect the purposes of the PCAA and the interests of animal welfare by making clear that an intention to abandon an animal is not necessary for an animal to be abandoned in fact. In other words, it is not necessary for me to find that the Appellant intended to abandon the animals. If they are- 11 “abandoned” on an objective basis, the statutory definition is met.

[48] Based on the evidence presented, the Panel is satisfied that the conditions of abandonment outlined in Section 10(1)(a) of the PCAA were met. The fact that the Appellant tied his dog outside the New Shelter, asked others to watch him, then left, saying he “needed a break” (although the Appellant does not recall saying this) support that finding. Because the shelter staff told the Society that they were not equipped to look after the dog, Milo was found to be abandoned under Section 10(1) of the Act and third-party surrendered to the SPCA under Section 10(2) of the Act.

71. The Appellant was taken by the RCMP and left Elly behind with no one to watch her. Although the Appellant’s witness, J.B. testified that she asked E.W. if she could take Elly, the Panel finds her testimony lacked credibility. The Panel preferred the evidence of E.W. and L.S..
72. E.W. advised that J.B. already had a dog and only one dog was allowed in a suite. Therefore, she would not have approved J.B. in any event. Furthermore, L.S. stated that no one came to the staff office to inquire about Elly and no one saw the incident of the Appellant being taken away by the RCMP. E.W. and her staff did not know how long the Appellant would be detained at the hospital.
73. Given the test for abandonment is an objective one, it is not necessary to prove whether the Appellant intended to abandon Elly or not.
74. Therefore, given all of the evidence, the Panel finds that Elly was objectively abandoned by the Appellant on August 14, 2022, and was properly surrendered by the Facility staff to the Society.

Returning Elly

75. The Panel must now decide whether it is in Elly's best interests to be returned to the Appellant.
76. The courts have considered the legislative framework of the *Act*. In *Eliason v BCSPCA*, 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.
77. The main matter in question is whether the Appellant is capable of providing an adequate environment and care for Elly. If Elly will be returned to a situation of distress, then she should not be returned to the Appellant. The onus is on the Appellant to show that Elly's return is justified.
78. The definition of "distress" is broad and intended to be protective and preventative. In *Bagga v. BCSPCA* (February 5, 2019), the Tribunal stated, in part, at paragraph 104:

[...] The definition of distress is intended to be protective and preventative. It does not require proof of actual harm; rather it describes those circumstances that create a significant risk of harm to animals and should be avoided. When these circumstances are not avoided and conditions place animals at sufficient risk, the PCAA provides that they can be protected.
79. It is noteworthy that the Appellant did not provide any submissions or a witness list. The Appellant was not present at the start of the hearing and had to be contacted by BCFIRB staff to find out if she wished to attend the hearing. Instead of submitting evidence proving that Elly's return is justified, she displayed a cavalier attitude towards this process.
80. The testimony of the Society's witnesses and E.W. overwhelmingly proved that the Appellant is incapable of providing Elly an environment free of distress. The Appellant lives in a very small suite with poor ventilation that is cluttered with injurious objects and other hazards, including drug paraphernalia such as used needles. During this appeal period, the Appellant did not take any steps to declutter her suite despite offers of help from the Facility's staff members, yet the Appellant blames the staff for not helping her. The Appellant was served with a Notice of Eviction because her suite does not meet fire safety standards and has not for a long time. She is trying to find another place to live but she cannot afford the rents. Therefore, it is unknown whether the Appellant could provide adequate shelter for Elly given she faces eviction and does not have alternative housing.

81. Other concerns include whether the Appellant would seek veterinary care for Elly if required. She refused to take her previous puppy to a veterinarian after it had ingested narcotics. She intended to buy vaccinations online and inject her previous puppies herself. It is reasonable to believe that she would do the same with Elly.
82. Elly's best interests outweigh the Appellant's claim to Elly. Elly faces a grave risk of falling into a situation of distress if she is returned to the Appellant.
83. The Panel finds that it is not in Elly's best interests to return her to the Appellant.

IX. Order

84. Pursuant to section 20.6(b) of the Act, the Society is permitted, in its discretion, to destroy, sell, or otherwise dispose of Elly, with the obvious hope and expectation that Elly will be adopted.

X. Costs

85. Based upon our review, the Panel finds that the Society's costs are minimal and reasonable. The Appellant made no submissions with respect to costs. The Panel confirms, pursuant to section 20(6)(c) of the Act, that the Appellant is liable to the Society for \$123.73.

Dated at Victoria, British Columbia this 14th day of October 2022.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Harveen Thauli, Presiding Member

Appendix “A”

Exhibit #	Date (Received)	Received from	Document
Exhibit #1	August 26, 2022	BCSPCA	K.P. v BCSPCA No Return Decision Letter – August 26, 2022
Exhibit #2	August 26, 2022	Appellant	K.P. NOA (email advising appealing)
Exhibit #3	August 27, 2022	BCFIRB	K.P. v BCSPCA P2210 – NOA Process Letter
Exhibit #4	September 12, 2022	BCSPCA	LT Appellant and BCFIRB encl doc disclosure
Exhibit #5	September 12, 2022	BCSPCA	BCSPCA Document Disclosure (Tab 1 to Tab 22)
Exhibit #6	September 21, 2022	BCFIRB	BCFIRB Email – Appellant Initial Submission Not Received
Exhibit #7	September 23	BCSPCA	LT all encl submissions
Exhibit #8	September 23	BCSPCA	BCSPCA Submissions
Exhibit #9	September 23	BCSPCA	Affidavit 1 of Marcie Moriarty
Exhibit #10	September 23	BCSPCA	BCSPCA Witnesses Contact Form
Exhibit #11	September 23	BCSPCA	Updated BC SPCA Document Disclosure Index [Tab 1- Tab 24]
Exhibit #12	September 23	BCSPCA	Tab 23
Exhibit #13	September 23	BCSPCA	Tab 24
Exhibit #14	September 28	BCFIRB	K.P. v BCSPCA – Appellant Submissions Not Received