

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:

K.R.

APPELLANT

AND:

BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS

RESPONDENT

DECISION

APPEARANCES:

For the British Columbia Farm Industry
Review Board:

Wendy Holm, Presiding Member

For the Appellant:

K.R.

For the Respondent:

Andrea Greenwood, Counsel

Date of Hearing:

February 10, 2023

Location of Hearing:

Zoom

A. Overview

1. This is an appeal pursuant to s. 20.3 of the *Prevention of Cruelty to Animals Act, R.S.B.C. 1996, c. 372* (the *PCAA*) related to the seizure of one dog (Bailey) from the Appellant K.R. at his residence, a unit in a social housing property located in Vancouver, BC (the Property).
2. The Appellant is appealing the January 9, 2023, review decision issued under s. 20.2(4)(b) of the *PCAA* 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 *PCAA* permits the British Columbia Farm Industry Review Board (BCFIRB), on hearing an appeal with respect to animals, to require the Society to return the animals to their 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 Bailey to his care.
4. On February 10, 2023, a BCFIRB hearing panel (the Panel) held a video hearing via Zoom. The hearing was recorded.
5. The Appellant was not represented by counsel. The Appellant called one witness L.M. and also gave evidence on his own behalf.
6. The Society was represented by counsel and called two witnesses: Special Provincial Constable (SPC) Felix Cheung and one confidential witness.

B. Preliminary Matters

7. On January 17, 2023, the Society applied pursuant to section 42 of the *Administrative Tribunals Act, S.B.C. 2004, c. 45* (*ATA*) to provide a redacted record of the documents related to the Information to Obtain a Search Warrant (ITO) as well as all other documents produced within the appeal in order to preserve the confidentiality of the complainants and to ensure the Society remained in compliance with the Sealing Order that it had obtained related to the ITO. The Sealing Order was based on a finding by the Judicial Justice of the Provincial Court that there were reasonable grounds to believe that there were serious safety concerns for the third parties that made the initial complaint to the Society.
8. On January 18, 2023, in written reasons, the presiding member granted the Society's application to provide the disclosure package to the Appellant with the redactions proposed.
9. On January 31, 2023, the Society further applied pursuant to section 42 of the *ATA*, for an order that one of the witnesses that it intended to call at the hearing of

the appeal be able to provide their evidence in confidence to the exclusion of the Appellant. The application noted serious welfare concerns for the witness if they were required to give evidence and the manner in which the witnesses' evidence could otherwise be addressed by the Appellant.

10. On February 3, 2023, the presiding member granted the Society's application for the witness to attend in confidence to the exclusion of the Appellant on certain terms meant to address any procedural fairness concerns arising.

C. Material Admitted on this Appeal

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

D. History Leading to Seizure of the Animal and the Day of Seizure

12. Prior to the seizure on December 14, 2022 the Society had attended the Property on three separate occasions (July 25, 2022, December 11, 2022 and December 13, 2022) in response to complaints that Bailey was suffering from exposure to toxic drugs.
13. On July 17, 2022, the Society received a complaint from a staff member at the Property that Bailey was regularly exhibiting the symptoms of heroin intoxication from ingesting or inhaling the drug while in the Appellant's room and that Bailey was "a totally different dog" before and after exposure to drugs in the Appellant's room. The complainant told the Society that there were often up to 10 people in the Appellant's room doing drugs, and after one hour being inside the room, Bailey's eyes would be dilated, her tail would be between her legs, her ears would be down, and she would be woozy, coughing and vomiting. The complainant asserted that this had been going on for months and that 3 months earlier a staff member had taken Bailey to a local veterinarian who had found fentanyl in her system. The complainant told the Society that Bailey was kept in the Appellant's room without adequate exercise, and that urine and feces in the bathroom of the unit created unsanitary conditions for the dog.
14. On July 25, 2022, SPC Felix Cheung attended the Property. A staff member at the front desk told SPC Cheung that the Appellant was a drug dealer, that he frequently smoked drugs in his room with Bailey present, and that often there would be up to 5 people together with him in his room smoking drugs. SPC Cheung was told by one staff member that he had observed Bailey appearing lethargic and having bloody stools after spending time in the Appellant's unit.
15. SPC Cheung then visited the Appellant in his unit, which appeared clean. Bailey appeared happy and healthy. SPC Cheung explained to the Appellant the reports that he had received of Bailey having been exposed to drugs while in the unit. The

Appellant denied smoking drugs in front of Bailey and told SPC Cheung that he used an air purifier. SPC Cheung informed the Appellant that Bailey could get lethally sick from exposure to drugs and that he could not smoke drugs near his dog or allow others to do so. The Appellant said he understood. SPC Cheung warned that if Bailey was exposed to drugs in the future, it could result in legal action.

16. SPC Cheung issued a notice which he provided to the Appellant that contained the following handwritten comment:

Make sure you aren't smoking drugs near Bailey, and that no one else is either. Make sure Bailey isn't exposed to drugs.

The handwritten comment was followed by a warning that any failure to protect Bailey from drug exposure could result in legal action including an application for a search warrant, the removal of Bailey and/or charges pursuant to the *PCAA*.

17. On December 11, 2022 at 3:51 pm, the Society received a call from a resident of the Property complaining that Bailey was still able to access noxious substances, which were believed by the resident to be fentanyl. The complainant said the dog was lethargic, unable to stand and yelped when moved. The complainant further noted that Bailey had her tail tucked between her legs and was having difficulty defecating. The complainant stated that there was blood in Bailey's stool.
18. At 4:50 pm that same day, SPC Cheung attended the Property and spoke with the Appellant in his unit. No drugs were observed by SPC Cheung. Bailey appeared groggy, shaky and sleepy but jumped up onto the bed when her name was called. The Appellant told SPC Cheung that Bailey had been with a staff member for two hours, and that when she returned around 3:30 pm Bailey acted as if she had ingested some drugs, but her condition had subsequently improved. The Appellant suggested that Bailey must have found the drugs which she ingested in the hallways of the Property.
19. SPC Cheung told the Appellant that whatever Bailey had ingested seemed to be wearing off, but that Bailey would have to go to a veterinarian if she became lethargic or her condition worsened. SPC Cheung asked the Appellant if he was using drugs or leaving them around where Bailey could get to them, and the Appellant said he was not. SPC Cheung gave the Appellant another verbal warning.
20. Later that same afternoon, SPC Cheung spoke with the complainant in a follow up interview by telephone. The complainant said they first became aware of Bailey's situation eight months ago and that the problem had been ongoing for months. The complainant noted that staff at the Property had previously taken Bailey to the veterinarian, where she'd tested positive for "hard drugs", and that the most recent occurrence was the worst that they had had observed. The complainant noted that during the recent occurrence Bailey kept trying to get up but would collapse

repeatedly. The complainant referred SPC Cheung to a staff member who regularly walked Bailey for more information.

21. At 12:30 pm on December 13, 2022 SPC Cheung received a call from a staff member at the Property who reported that Bailey again appeared to be under the influence of drugs. She reported that Bailey was lethargic, whimpering, shaking and unable to get up off the ground. SPC Cheung noted that he could hear Bailey crying loudly over the phone in the background. The complainant further stated that Bailey's condition was noticed 15 minutes earlier when she was taken out of the Appellant's unit by staff. The complainant told SPC Cheung that Bailey had been in the Appellant's unit all day and had been nowhere else. The complainant inferred that the drug exposure must have come from the Appellant's unit.
22. SPC Cheung attended at the Property at 1:00 pm that same day. When he arrived, Bailey had been moved to the front office. The complainant and the property manager were present. The property manager told SPC Cheung that she had given Bailey NARCAN just before his arrival, and it appeared to be helping. SPC Cheung observed that Bailey was walking slowly, shaking and whimpering. The property manager told SPC Cheung that before the administration of NARCAN, Bailey had been unable to stand and that she believed Bailey had overdosed as a result of being in the Appellant's unit.
23. The property manager advised SPC Cheung that the Appellant's children were visiting, and that the Appellant and his guests would be smoking crystal meth and fentanyl inside the unit while Bailey was present. The property manager added that Bailey had been regularly overdosing ever since the Appellant's family had come to stay with him. SPC Cheung told staff that he was going to pursue a warrant to seize Bailey to prevent further drug exposure.
24. At 4:00 pm that afternoon, SPC Cheung applied for and was granted a warrant to seize Bailey the following morning (December 14, 2022). That afternoon SPC Cheung also spoke with the staff member noted by the complainant (a resident) two days earlier. In that call, the staff member told SPC Cheung that Bailey had been observed to be drowsy almost every morning over the past month after spending the night with the Appellant. The staff member noted that if not showing signs of drug poisoning in the morning, Bailey would often be intoxicated when staff took her for her afternoon walk. The staff member told Cheung that staff had tried to work with the Appellant by asking him to let them know when he was going to use drugs so that they could remove Bailey from his room and take her into the office or for a walk, but that the Appellant had refused.
25. On December 14, 2022 at 9:00 am SPC Cheung attended the Property with Vancouver Police Department Constables Montgomery and Bowater to execute the search warrant and seize Bailey. SPC Cheung informed the Appellant that Bailey was being seized due to repeated drug exposure and that he had 14 days to dispute the seizure if he wished. The Appellant told SPC Cheung that he believed

Bailey's drug exposure could be the result of her licking her paws after having been exposed to drugs on the ground outside of his unit.

26. Bailey was taken by SPC Cheung to a veterinarian, who confirmed that Bailey tested positive for opioids¹, cocaine and amphetamines but was clinically okay and did not require further treatment or medical intervention. The Society placed Bailey in foster care that same day.

E. Review Decision

27. On January 9, 2023, Ms. Moriarty issued her review decision in which she outlined her reasons for not returning Bailey to the Appellant (the "Review Decision").
28. Ms. Moriarty reviewed the BC SPCA Notice B37731 issued July 25, 2022, the BC SPCA Physical Intake Examination Form dated December 14, 2022, the Veterinary Notes for Bailey and the corresponding invoice dated December 14, 2022. She also took Bailey's current condition into consideration. Ms. Moriarty was satisfied, based on the evidence, that SPC Cheung had reasonably formed the opinion that Bailey was in distress, as defined in section 1(2) of the *PCAA*, and that his action to take custody of Bailey to relieve the distress was appropriate.
29. In her decision not to return Bailey to the Appellant, Ms. Moriarty noted, in part, that there was:

...ample evidence for me to conclude that Bailey has been exposed to and ingested/overdosed on drugs on multiple occasions while in your care. You have not provided any submissions or information to me that confirms you acknowledge the issues with Bailey's exposure to these drugs nor that you will take steps to prevent further ingestion / overdose incidents. As a result, there is simply nothing before me that would lead me to believe it is in Bailey's best interest to be returned to you and, as such, I will not order her return...

F. Evidence

30. In an appeal under the *PCAA*, the Panel must determine whether an animal was in distress when seized and, if so, whether the animal should they be returned to the Appellant. Although the Panel has fully considered all the relevant facts and evidence in this appeal, in the following summary the Panel refers only to the facts and evidence it considers necessary to explain its reasoning in this decision.

¹ Opioids are a class of drugs that include the illegal drug heroin, synthetic opioids such as fentanyl, and pain relievers available legally by prescription, such as oxycodone (OxyContin®), hydrocodone (Vicodin®), codeine, morphine, and many others.

Appellant Testimony

31. The Appellant testified that he lives in a harm reduction building and that he believed that the source of Bailey's drug exposure on July 17, 2022, December 11, 2022 and December 13, 2022 was outside of his unit, in the hallways of the building or outside while on walks with staff.
32. He testified that staff at the Property take Bailey for walks twice a day, and that Bailey must have ingested drugs during those times as she was fine when she left his care. When asked by the Panel what steps he would take to ensure that Bailey did not ingest drugs in future, the Appellant said he would not allow her to walk in the hallways with staff doing hallway checks and would only allow her outside if walked by himself or his dog walker.
33. On cross examination by the Society, the Appellant stated that he has lived in his unit at the Property since the late summer/early fall of 2021. He noted that Bailey is five years old and has lived with him since she was a puppy. The Appellant advised that he has mobility issues and uses a walker. He noted that he would like to take Bailey to the park daily but cannot because of his disability and consequently someone else in the building assists to walk her daily.
34. The Appellant denied that Bailey has been repeatedly exposed to drugs inside his unit. The Appellant testified that after the July 25, 2022 visit by SPC Cheung, he had stopped smoking drugs around Bailey. He noted that he operated an air purifier in his unit and that he had purchased a steam mop to use on the floor. The Appellant stated that staff were aware they had to be careful to ensure that Bailey was not exposed to drugs when they took her in the hallway and on walks, but exposures continued to occur.
35. The Appellant testified that Bailey visited a veterinarian sometime prior to July 2022, when a friend took her in on his behalf after a dog-walker noticed blood in Bailey's stool and told him the dog must have "gotten into something". The veterinarian kept her overnight and confirmed Bailey had ingested "something". The Appellant testified that aside from this instance, the only other time that Bailey saw a veterinarian, to his knowledge was when SPC Cheung took her to a veterinary hospital following her seizure on December 14, 2022.
36. When asked if it was possible that Bailey had been exposed to drugs in his unit after July, 2022 the Appellant replied that it was not possible since, "no-one smokes drugs around Bailey". In response to further questioning on this point, the Appellant acknowledged that the drugs he used were in powdered form, but that it was not possible that any powder got onto the floor.
37. When he was questioned on the events that occurred in the three days prior to the seizure (described in Section D above), the Appellant was adamant that Bailey's exposure to drugs on both December 11, 2022 and December 13, 2022 had

occurred outside of his unit, when she was with staff in the hallways or out on a walk. The Appellant acknowledged that he had not cautioned staff to not walk her in the hallways, but he further stated that they knew to make sure Bailey did not get into drugs. He testified that neither he nor his family – who had been staying with him for several months and were living with him at the time, smoked drugs in front of Bailey.

38. The Appellant asserted that on December 11, 2022 Bailey was fine in the morning and was exposed to drugs after being walked by staff. The Appellant stated that following SPC Cheung's visit that day, he had made staff aware of the situation but admitted that he did not make any changes to how Bailey was walked by staff either in the hallways or outside the building.
39. With respect to the events of December 13, 2022 the Appellant stated that Bailey was with him the morning until she left his unit to visit staff. Staff members then returned 30 to 45 minutes later to say that Bailey had been exposed to drugs and that they had administered NARCAN. When asked if Bailey had been taken to a veterinarian afterwards, the Appellant said that she was not groggy just not quite herself, so he did not feel that it was necessary to take her to a veterinarian.
40. The Appellant denied that he had been smoking drugs around Bailey that morning, but he could not recall whether family members had. The Appellant again asserted that Bailey could not possibly have been exposed to drugs in his unit and that the only time that Bailey was exposed to drugs was when she was out with staff.
41. The Appellant denied that staff had offered to take Bailey to a veterinarian, and also denied that staff had offered to take Bailey into the front office when he wanted to use drugs in his room. He claimed that he and his family used drugs one to three times a week, only when Bailey was with the staff, and that he would clean the room before Bailey returned.
42. The Appellant stated that as far as he was aware December 13, 2022 was the first time that NARCAN had been administered to Bailey. When counsel for the Society suggested to him that Bailey had been administered NARCAN in September of 2022 the Appellant said that he was not aware that had occurred.
43. The Appellant denied the evidence provided to the Society that he used drugs in his unit with Bailey present and furthermore that Bailey had been overdosing on an almost daily basis for several months prior to the most recent incidents that led to her seizure. The Appellant reiterated that following SPC Cheung's July 2022 visit he did not use drugs in his unit nor allow others to do so. He stated that Bailey was never exposed to drugs in his unit after that time nor was it possible that such exposure had occurred accidentally.
44. When he was presented with the veterinarian report of December 14, 2022 which confirmed that Bailey had been exposed to opioids, cocaine and amphetamines,

the Appellant again claimed that Bailey could only have been exposed when she was with staff in the hallways or walking outside. When asked if he had told staff to stop walking Bailey in the hallways in order to protect her from drug exposure, he admitted that he had not made that request.

45. When asked if he used drugs in his room when Bailey was not there, the Appellant replied that he did use drugs when Bailey was with staff and repeated that he typically used drugs in his room approximately three times per week. He further noted that his friends and family only used drugs in his room while he was with them.
46. The Appellant stated that he crushed the drugs that he used into powder but that he was very cautious when preparing, using and storing his drugs and as such it was impossible that any of his drugs has spilled onto the floor and caused Bailey's drug exposures. He again reiterated his belief that Bailey could not have been exposed while in his unit and that the exposures must have occurred while she was in the care of staff.
47. When asked if he recalled staff offering to connect Bailey to Atira's pet outreach program, the Appellant denied having ever heard of the program until December 13, 2022.

Appellant Witnesses:

48. The Appellant called one witness, L. M., a friend who had taken Bailey to the veterinarian on the Appellant's behalf prior to July 2022. At the time of that veterinarian visit Bailey had blood in her stool and had "gotten into something". L.M. testified that the veterinarian concurred that Bailey had ingested something problematic and kept her overnight, but the veterinarian did not indicate what it was that Bailey had ingested. L. M. further testified that he sometimes takes Bailey for walks, that she is an incredibly happy dog that loves people, and that the Appellant loves and always takes good care of Bailey.

Respondent Witnesses:

49. The Society called a confidential witness (the "Witness") to give evidence and the Appellant was excluded from the video conference for that portion of the hearing. As per the order made by the presiding member on February 3, 2023 the Witnesses' evidence was heard in confidence due to concerns regarding future interactions with the Appellant. The Witnesses evidence has been summarized as follows in a manner to protect the Witnesses identity but also provide the relevant facts relied upon by this Panel. The Witnesses evidence was also summarized by SPC Cheung as it was reported to him during his investigation and the relevant facts were included in the Society's cross examination of the Appellant such that the Appellant had the opportunity to give his account of the events and circumstances as described by the Witness.

50. The key facts of the Witnesses testimony are as follows:

- The Witness has interacted regularly with both the Appellant and with Bailey for an extended period of time. The Witness is familiar with the Property and its policies and procedures. The Witness has observed the Appellant's unit and Bailey's living conditions.
- The Witness testified that (their) observations of Bailey's behaviour led (them) to believe that Bailey has been exposed to drugs on a regular and potentially daily basis. The Witness noted that it was the exception for Bailey to present as a healthy dog and that her normal presentation included some notable effects of drug exposure.
- The Witness testified that at variable times during the day Bailey would show signs of exposure to drugs including whimpering, confusion, inability to stand, and general illness. The Witness noted that Bailey would often have diarrhea. The Witness suggested that in every instance where Bailey was showing signs of drug exposure, it was after having come from the Appellant's unit.
- The Witness testified that in instances where Bailey had been in the care of others for extended periods of time her health and her overall presentation had improved dramatically. The Witness further testified that when Bailey was returned to the Appellant's care, she returned to demonstrating the effects of drug exposure.
- The Witness testified that the Appellant had rejected the repeated efforts that had been made to assist the Appellant in obtaining outside care and veterinarian services for Bailey. The Witness noted that staff at the Property had made significant efforts to remove Bailey from the Appellant's unit when he was suspected to be using drugs in order to protect Bailey and that the Appellant would often push back against such assistance. The Witness testified that staff had administered NARCAN to Bailey on more than one occasion and had also provided Bailey with charcoal on several occasions.
- The Witness testified that the Appellant regularly had numerous visitors at his unit using drugs and that the strong smell from his unit made the drug usage very obvious. The Witness testified that it was also suspected that the Appellant was selling drugs to the visitors. The Witness testified that the Appellant's unit was often littered with drug paraphernalia.
- The Witness testified that the common areas of the Property would not have exposed Bailey to drugs. The Witness noted that the Property is regularly professionally cleaned and that other pets on the Property have not demonstrated the effects of drug exposure.

- The Witness testified that there had been no noticeable improvements in Bailey's living conditions or the Appellant's willingness to provide proper care for Bailey. The Witness noted that (they) did not consider any such changes likely to occur in the future and that if Bailey was returned to the Appellant she would end up in the same circumstances as had previously been the case.
51. The confidential witness was excused, and counsel for the Society asked the presiding member to recall the Appellant for some final questions. The presiding member agreed, and the Appellant was recalled to address some of the evidence that had been presented by the Witness.
52. In further cross examination, the Appellant testified as follows:
- The Appellant stated that his drug usage included marijuana and opioids (fentanyl and heroin) as a pain killer. He noted that some of the opioids were crushed up by him into powdered form.
 - The Appellant confirmed that other people in his room used the same drugs as he used. The Appellant initially denied that any of his visitors used cocaine while at his unit but later conceded that it was possible.
 - The Appellant stated that none of his visitors had used amphetamines while at his unit, but again later concede that it was possible.
 - The Appellant stated that he did not sell drugs to anyone that lived at the Property and that he did not give any drugs away to anyone that lived at the Property but that he would sometimes share drugs with other residents.
53. The Society called its final witness, SPC Cheung. SPC Cheung testified that he has a 4-year degree in animal biology and animal welfare and began his career with the Society in 2016 as an animal care technician. He later advanced to an Animal Protection Officer and for the past 2.5 years has been a Special Provincial Constable.
54. SPC Cheung testified that he first became involved with the Appellant in July of 2022 in response to concerns that there were often multiple people - upwards of 10 – doing drugs together in the Appellant's unit while Bailey was present and that she was thereby being exposed to drugs on an almost daily basis.
55. When he visited the Property and spoke with the Appellant, the Appellant claimed that he never used drugs when Bailey was in the room. SPC Cheung issued the Appellant a notice that drugs were not to be used in Bailey's presence and that non-compliance with the notice could result in further legal action.
56. On December 11, 2022 SPC Cheung received a second complaint that Bailey was again under the influence of drugs, was yelping, and had blood in her feces.

SPC Cheung again attended at the Property and spoke with the Appellant who told SPC Cheung that a staff member had taken Bailey out for a walk and that Bailey must have been exposed to drugs while on that walk. SPC Cheung said that he would look into the allegations and told the Appellant to let the staff know what precautions they needed to take to avoid drug exposure when walking Bailey.

57. On December 13, 2022, SPC Cheung received a third complaint that Bailey was suffering from serious drug intoxication. He testified that could hear her whimpering and squealing over the phone while receiving the complaint. SPC Cheung arrived at the Property 15 minutes after Bailey had been administered NARCAN. At that time staff told him she had been vocalizing, immobile and shaking until the NARCAN was administered. Staff advised SPC Cheung that Bailey had been in the Appellant's room all morning so there was no way that she had been exposed to drugs outside of his unit – for example on a walk or in the halls.
58. With respect to the Appellant's assertions that Bailey's repeated exposures to drugs were happening outside his unit, staff of the Property told SPC Cheung that on December 11, 2022 Bailey was already exhibiting symptoms of drug toxicity when staff came to take her for her morning walk and on December 13, 2022 she had just been removed from the Appellant's unit and had been there all day.
59. SPC Cheung further testified, that prior to the seizure, staff advised him that the Appellants family had been visiting recently. Staff noted that visiting family members and the Appellant used drugs together while Bailey was in the room and that they had been living there for weeks. Staff told SPC Cheung that they believed that Bailey was being exposed to toxic drugs in the Appellant's unit. In a follow up conversation, SPC Cheung was told by staff that Bailey was overdosing regularly, on almost a daily basis, and that the situation had been ongoing for months.
60. On December 14, 2022, SPC Cheung executed a warrant to seize Bailey at 9:00 am. He and informed the Appellant that he was seizing Bailey due to her constant exposure to drugs.
61. With respect to whether Bailey should be returned, SPC Cheung testified that it was his understanding, after interviewing staff members and the building manager, that the Appellant had rejected all staff offers of assistance that might have lessened the conditions of distress that led to Bailey's seizure.
62. SPC Cheung stated that the Appellant never let staff take Bailey home on weekends despite that offer having been made prior to the seizure. The Appellant had also failed to limit the number of guests doing drugs in the Appellant's unit while Bailey was present and had rejected staff offers to provide Bailey with veterinary care and support through Atira's animal support team. Furthermore, some members of the staff have now advised that they are no longer comfortable having Bailey spend time in the front office or accompany staff on hallway checks.

This would dramatically curtail the ability of other staff members to limit Bailey's drug exposure by removing her from the Appellant's unit.

63. SPC Cheung noted that the Appellant took no responsibility for Bailey having repeatedly overdosed on drugs. SPC Cheung stated that the Appellant's failure to acknowledge the source of Bailey's drug exposure and his attempt to shift responsibility onto others raised serious concerns with respect to the Appellant's ability make plans to rectify the situation.
64. The Appellant had no questions for SPC Cheung in cross-examination, but did note that SPC Cheung's evidence was "pretty much accurate".

Submissions

65. In his closing submissions, the Appellant stated that Bailey was not in distress on the day of seizure, but that it was the day before that she was in distress. He noted that he has had her since she was a puppy and that he has never had any problems in the past. The Appellant suggested that he must have made an enemy in the building because things were being said at the hearing that were not true.
66. The Appellant stated that he was willing to do whatever was necessary to get Bailey back and that the last thing he would want is for her health to be in jeopardy. He said that he believed Bailey "has it better than most people do".
67. When asked by the Panel what he would change to ensure that Bailey would not be exposed to drugs again, the Appellant replied that he would not let her walk around the building, noting that his room was right next to the outside door, and that he would allow staff to visit her only in the office and not in the hallways. When asked for his submission on costs, the Appellant said that he was aware that there will be costs and that he was able to look after them.
68. In their closing submissions, the Society argued there was ample evidence that Bailey was in circumstances of distress, as defined in the *PCAA*, at the time of seizure. The evidence showed that Bailey was regularly exposed to drugs and overdosing and that this had happened multiple times over a period of many months leading up to her December 14, 2022 seizure. The evidence further showed that these repeated drug exposures had occurred in the Appellant's unit when the Appellant and others were using drugs in Bailey's presence.
69. The Society submitted that since the drugs used by the Appellant and his friends were ground into a powdered form before consuming, some amount of the powdered drugs could easily have been dropped by guests, particularly when they were intoxicated themselves, thereby leaving a residue on the floor of the unit that invariably exposed Bailey to the drugs being consumed.

70. The Society noted that on the day of her apprehension Bailey tested positive for cocaine, opioids and amphetamines and was therefore properly seized under the *PCAA*. A statement from the veterinarian provided evidence on how drug exposures can occur and the potential outcomes of such exposures – including the need for follow up veterinary care, yet the Appellant has never taken Bailey to a veterinarian, despite her repeated exposures. According to the Appellant’s own evidence, Bailey has only been seen by a veterinarian twice; once when she was brought in by a friend in July of 2022 and once when she was seized by the Society.
71. With respect to whether Bailey should be returned to the Appellant, the Society noted that Bailey’s exposure to toxic drugs has gone on for many months, yet the Appellant has rejected all offers of help from staff to try to reduce Bailey’s exposure and to seek veterinary care.
72. The Society noted that the Appellant could have made simple changes, but those changes have not been made and the Appellant’s reliance on staff has become problematic as some members of staff are no longer supportive of working with him to attend to Bailey’s care. Furthermore, the Appellant has not taken any responsibility with respect to these exposures and adamantly denies even the possibility that the exposure could be coming from his unit. The Society noted that if the Appellant doesn’t have an understanding of how his actions are exposing his dog to drugs then he can’t be expected to modify his conduct in the future.
73. The Society submitted that the Appellant’s conspiratorial submission that Bailey was removed because he has an enemy in the building ignores the reality that Bailey was exposed to a toxic level of drugs multiple times over multiple months. Similarly, the Appellant’s submission that Bailey’s repeated exposure to drugs happened outside his unit, in the building and on walks, ignores the fact that other animals living in the building have not experienced similar exposures.
74. The Society submitted that while the Appellant says that he would do anything for Bailey, he has failed to take even minor steps, despite having ample opportunity, to reduce Bailey’s drug exposure. Furthermore, he has provided no response to the Society in this process outlining how things would change were Bailey returned to his care. The evidence suggests Bailey’s distress would continue if returned, with potentially fatal consequences.
75. In his reply submission, the Appellant stated that he does take responsibility for the situation and has taken precautions but argued again that his unit was not the source of Bailey’s drug exposure. He noted that other animals at the Property “have ingested things”. He stated that he is willing to work with people to change Bailey’s living conditions and that he has never turned down help. The Appellant denied the Society’s closing comments that he has never taken Bailey to a veterinarian, noting that he asked his friend to take her to a veterinarian in July of 2022 because of his mobility issues. The Appellant noted that if Bailey had been

subjected to drugs as often as the Society claims she has, then the dog would show signs of addiction and there is no evidence of that being the case.

G. Analysis and Decision

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

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

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

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

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

(b) cannot be found immediately and informed of the animal's distress,

the authorized agent may, in accordance with sections 13 and 14, take any action that the authorized agent considers necessary to relieve the animal's distress, including, without limitation, taking custody of the animal and arranging for food, water, shelter, care and veterinary treatment for it.

77. 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.

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

H. Distress

79. Based on the Society's written submissions and the evidence presented in this hearing, the Panel is satisfied that Bailey was in distress at the time of the seizure as defined by Section 1(2) of the *PCAA*.

80. In reaching this finding, the Panel considered a number of factors:
- a) Bailey was clearly exposed to toxic drugs.
 - b) The exposures were causing her harm (distress).
 - c) The exposures were frequent and significant.
 - d) The exposures were occurring while she was in the Appellant's care.
 - e) The Appellant failed to take the steps necessary to correct the situation.
81. With respect to item (a) above, the drug tests performed by the examining veterinarian on December 14, 2022, the day of her seizure, confirm that Bailey tested positive for opioids, cocaine and amphetamines. Witnesses further testified that when a staff member took her to a veterinarian in early 2022, she had tested positive for fentanyl. The evidence shows that Bailey had demonstrated behaviors that were consistent with repeated drug intoxication. In fact, the Appellant did not contest the fact that Bailey had been exposed, rather he took issue with the time and place where the exposures occurred. In short, the Panel finds that Bailey was repeatedly exposed to toxic drugs prior to her seizure.
82. With respect to item (b) above, witnesses reported that Bailey was a "completely different dog" after being exposed to toxic drugs. Her symptoms after having ingested toxic drugs included whining, whimpering, vomiting, rolling on the floor in pain, unable to stand, dilated pupils, other physical expressions of distress including holding her tail between her legs and bouts of bloody diarrhea. The veterinarian's report submitted by the Society outlined the physical symptoms and significant health risks of drug exposures for dogs. While the Panel would have preferred to have had the veterinarian present for the hearing to review and confirm the evidence contained in the report, it is also somewhat self-evident that significant exposure to opioids, amphetamines, and cocaine would lead to intoxication and distress in a dog. The Panel finds that Bailey was in distress due to her repeated exposure to drugs and furthermore that the failure of the Appellant to bring Bailey to a veterinarian at times when she was critically intoxicated could have led to her death.
83. With respect to item (c) above, based on the evidence presented at the hearing, the Panel finds Bailey was exposed to drugs on a regular basis before and after July 2022. The Society's witnesses were forthright and credible when presenting their evidence and had no motivation other than Bailey's best interests in providing their evidence. Their evidence was clear that Bailey was exposed to harmful drugs on a "daily or almost daily basis... throughout the day and throughout the night" for months at a time. The witnesses testified that the Appellant, together with his family and friends, regularly used drugs in his unit with Bailey present, and that Bailey frequently exhibited symptoms of drug toxicity. The witnesses also testified that staff had on numerous occasions offered to bring Bailey to the veterinarian when she exhibited symptoms of drug toxicity.
84. The Appellant was given an opportunity to respond to these assertions which he denied insisting that there had only been three incidents when Bailey may have

consumed drugs and that all occurred when she was in the care of staff outside his unit. However, when the Appellant had the opportunity to cross examine SPC Cheung, he said only that SPC Cheung's testimony was "pretty much accurate". Having reviewed all of the evidence, the Panel finds that the Appellant's statements to the effect that Bailey was only intoxicated due to drugs on a few occasions are not accurate, and that in any event even if the drug exposures were limited in number the fact that the exposures were significant enough on the occasions acknowledged by the Appellant that they required staff to intervene with NARCAN or charcoal, would support a finding that the exposures were frequent and significant enough to warrant the seizure.

85. With respect to item (d) above, the Panel is satisfied that the source of Bailey's exposure to toxic drugs was the Appellant's unit. During the hearing, the Appellant repeatedly asserted that, since SPC Cheung's visit in July 2022, the Appellant did not consume drugs in his unit when Bailey was present and that Bailey's exposure to toxic drugs only occurred when in the care of staff outside his unit. Based on the evidence presented, the Panel does not find the Appellant's assertions credible. The Panel prefers the evidence of the Society's witnesses that the source of the exposure was the Appellant's unit. The Panel accepts the evidence of the Society's witnesses that the Appellant, together with his family and friends regularly consumed drugs in his unit when Bailey was present, that this had been going on before and after July 2022, and that it was exposure within the Appellant's unit that resulted in the Bailey's intoxication. The Panel notes in particular the evidence that there are apparently 10 other animals living in the same residence, 3 of them dogs, and none have experienced the symptoms of drug toxicity.
86. With respect to item (e) above, the Panel finds that little if anything was done by the Appellant to remedy the situation prior to the seizure. After receiving an initial warning from SPC Cheung on July 25, 2022, the Appellant said that he purchased a steam mop to clean the floors in his unit. Comments made to SPC Cheung during his interviews with staff and the testimony of the Society's other witness suggest that to the extent that this was undertaken, it was not effective, and that the Appellant took no steps further to limit Bailey's exposure to drugs.
87. The Panel notes that if the Appellant believed that Bailey was ingesting drugs while in the hallways and on outdoor walks, he could have taken steps to reduce her exposure by, for example, asking staff not to walk Bailey in the hallways or purchasing a muzzle and asking Staff to make sure that Bailey was wearing it when outside his unit. The Appellant did not take even these simple steps and in fact it was staff at the Property that sought to protect Bailey by asking the Appellant to let them know when he and his guests wanted to smoke drugs in his unit so that they could remove Bailey to the front office.
88. The Appellant refused the help that was offered by staff and on December 11, 2022 and December 13, 2022, when Bailey exhibited symptoms of severe drug

toxicity, whining and yelping, dilated pupils, tail between her legs, unable to stand or walk, rolling on the floor in distress, the Appellant again refused offers from staff to take her to a veterinarian. The Appellant's failure to seek veterinary support for his dog was not limited to the most recent incidents. As noted above, staff told SPC Cheung that over the past year they had repeatedly offered to take Bailey to the veterinarian, either themselves or with the support of Atira's pet outreach team when she was suffering from the symptoms of drug toxicity, but the Appellant would not allow this to occur.

89. When cross examined by the Society on this evidence, the Appellant denied staff had ever offered to bring Bailey to the veterinarian and also denied that they had discussed with him support available through the Atira pet outreach program. The Panel finds the Appellant's blanket denials of the help that was offered to him by staff to be in clear contradiction of the fact that they regularly walked Bailey and otherwise cared for her when he was unable to do so. The fact that the Appellant would not allow others to provide care for Bailey when she was clearly suffering is extraordinarily difficult to square in any way with the Appellant's assertions that he places any kind of priority on her wellbeing.
90. Based on the foregoing, the Panel finds that Bailey was exposed to toxic drugs, that this exposure placed her in a situation of extreme distress that could have been fatal, that her exposure was frequent (daily or almost daily before and after July 2022), that Bailey's drug exposure was caused by being present in the Appellant's unit when he and his family and friends were consuming drugs, and that the Appellant has done nothing to attempt to reduce her risk of exposure.

I. Return of the Animal

91. When asked by the Panel what steps he would take to avoid Bailey ingesting drugs in future if she was returned to him, the Appellant said he would not allow her to walk in the hallways with staff doing hallway checks and would only allow her outside if walked by himself or his dog walker. Denying staff access to Bailey would not remove the source of Bailey's exposure to drugs (the Appellant's unit) and in fact would only aggravate the problem as the walks and office time provided by staff were very much to her benefit.
92. However, staff's ability to provide care for Bailey has been curtailed in any event due to some staff members no longer being willing to work with the Appellant to protect Bailey from the harmful effects of his drug use. The Appellant is not likely to change his lifestyle and stop using drugs in his unit. Therefore, the Panel finds that if returned, Bailey would be placed in a perpetual state of exposure and would inevitably return to a circumstance of distress which would require a further seizure.
93. Throughout the hearing, the Appellant denied any responsibility for Bailey's repeated exposure to toxic drugs. The Appellant failed to provide Bailey with

veterinary support following her drug overdoses and did not allow others to do so. The Appellant failed to make any submissions to the Society explaining what steps he would take to limit the danger to Bailey should she be returned to his care. Similarly, the Appellant initiated this appeal however he has failed to provide any substantive submissions as to why Bailey should be returned to his care.

94. The Panel agrees with the Society that it is not in the interests of Bailey to be returned to the Appellant. The Panel finds that Bailey should remain with the Society and hopefully, if circumstances allow, be placed for adoption.

J. Costs

95. Section 20 of the *PCAA* states:

20 (1) The owner of an animal taken into custody or destroyed under this Act is liable to the society for the reasonable costs incurred by the society under this Act with respect to the animal.

(2) The society may require the owner to pay all or part of the costs, with or without conditions, for which he or she is liable under subsection (1) before returning the animal.

(3) Subject to subsection (4), the society may retain the proceeds of a sale or other disposition of an animal under section 17 or 18.

(4) If the proceeds of a sale or other disposition exceed the costs referred to in subsection (1), the owner of the animal may, within 6 months of the date the animal was taken into custody, claim the balance from the society.

(5) Payment of costs under subsection (2) of this section does not prevent an appeal under section 20.3.

96. Section 20.6(c) of the *PCAA* provides that on hearing an appeal the board may “confirm or vary the amount of costs for which the owner is liable under section 20 (1) or that the owner must pay under section 20 (2)”.

97. The Society is seeking costs as follows:

1) Veterinary costs:	\$249.50
2) SPCA time to attend seizure:	\$82.17
3) Housing, feeding and caring for the Animal:	\$.00
4) Total:	\$331.67

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

acknowledged that the Society had incurred costs as a result of the seizure and did not contest the evidence presented by the Society in that regard.

K. Order

99. After careful consideration of the written and oral evidence presented in this hearing, the Panel makes the following determination of the issues and attendant orders.

- The Panel finds Bailey was in distress at the time of the seizure and that it is in the interests of the dog to remain in the care of the Society.
- The Panel orders pursuant to section 20.6 of the PCAA that the Society is permitted in its discretion to destroy, sell or otherwise dispose of the animal, with the obvious hope and expectation that Bailey will be adopted unless circumstances somehow preclude that possibility.
- The Panel further orders, pursuant to s. 20.6(c) of the PCAA, that the Appellant is liable to the Society for the amount of \$331.67 as the reasonable costs incurred by the Society with respect to caring for the dog Bailey.

Dated at Victoria, British Columbia this 27 day of February 2023.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Wendy Holm, Presiding Member

Appendix “A”

Exhibit #	Date (Received)	Received from	Document
Exhibit #1	Jan 9, 2023	BCSPCA	R. Decision Letter – January 9, 2023
Exhibit #2	Jan 13, 2023	Appellant	NOA – R.
Exhibit #3	Jan 17, 2023	BCFIRB	17 Jan 2023 R. v BCSPCA P2302 - NOA Process letter
Exhibit #4	Jan 18, 2023	BCFIRB	2023 Jan 18- R. v BCSPCA – Application Decision
Exhibit #5	Jan 24, 2023	BCSPCA	LT FIRB and R. encl. Document Disclosure
Exhibit #6	Jan 24, 2023	BCSPCA	R. Document Disclosure Binder - Tabs 1-19 (Redacted)
Exhibit #7	Feb 1, 2023	BCFIRB	Email: Appellant Initial Submission Not Received
Exhibit #8	Feb 3, 2023	BCSPCA	BCSPCA Submissions – R.
Exhibit #9	Feb 3, 2023	BCSPCA	Affidavit 1 of Marcie Moriarty
Exhibit #10	Feb 3, 2023	BCSPCA	Examining Veterinarian Report Redacted
Exhibit #11	Feb 3, 2023	BCFIRB	2023 Feb3 – R. v BCSPCA - Ex Parte Sec 42 Application Decision 2
Exhibit #12	Feb 9, 2023	BCFIRB	R. v BCSPCA - Final Submission Not Received