

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:

TYLER (SYDNEY) LEPPER

APPELLANT

AND:

BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS

RESPONDENT

DECISION

APPEARANCES:

For the British Columbia Farm Industry
Review Board:

Jane Pritchard, Presiding Member

For the Appellant:

Tyler (Sydney) Lepper

For the Respondent:

Andrea Greenwood, Counsel

Date of Hearing:

September 9, 2024

Location of Hearing:

Teleconference

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 (the Animal, also referred to as Harlow) from the Appellant Tyler (Sydney) Lepper at [REDACTED] in Vancouver, BC (the Property).
2. The Appellant is appealing the August 8, 2024, review decision issued under s. 20.2(4)(b) of the PCAA by Marcie Moriarty, Chief of Protection and Outreach Services, 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 the Animal.
4. On September 9, 2024, 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 gave evidence on her own behalf and called two witnesses, A.W. & A. E.
6. The Society was represented by counsel and called two witnesses, Special Provincial Constable (SPC) Felix Cheung, and Animal Protection Officer (APO) Christopher Sharma.

B. Decision Summary

7. This decision concerns the outcome of investigations conducted by the Society in response to multiple complaints from the public about the care of and distress experienced by Harlow between January 2023 and July 2024. In particular, the decision focuses on two drug overdoses experienced by Harlow and documented by the Society.
8. The first overdose occurred on June 26, 2024, and was investigated by APO Sharma. At that time, APO Sharma instructed the Appellant not to allow Harlow to be unattended on the street outside the Property as it clearly put Harlow at extreme risk of another overdose. The second overdose occurred again on the street outside the Property on July 21, 2024, and was investigated by SPC Cheung. On July 21, 2024, SPC Cheung obtained a search warrant for that location. The search warrant was executed on July 22, 2024, and resulted in the seizure of Harlow.

9. The Panel is satisfied that Harlow was in distress because of a drug overdose at the time of the seizure on July 22, 2024, as defined by Section 1(2) of the PCAA. This finding is explained in the decision further below.
10. The Appellant has made changes to her life and has acquired a muzzle to prevent Harlow from consuming drugs from the ground, sidewalk and street while outdoors in the Appellant's community. The Appellant has further planned to have Harlow watched when she cannot do so. Despite these efforts, the Panel finds that there is a high ongoing overdose risk to Harlow, due to her habit of consuming drugs from the ground even while being watched. The Panel can therefore not support a return of Harlow to the Appellant.
11. As a result, and as further set out below 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 Harlow, with the obvious hope that Harlow will be adopted unless circumstances somehow preclude that possibility.

C. Preliminary Matters

12. On August 22, 2024, the Presiding Member in this appeal issued an order arising from a without notice application brought by the Society under Section 42 of the *Administrative Tribunal Act*. The order permitted the Society to redact identifying information from all documents produced for the Appellant in this appeal to preserve the confidentiality of complainants and to ensure that the Society remained in compliance with a Provincial Court Sealing Order obtained by the Society at the time of the seizure.
13. The Presiding Member further directed that unredacted copies of late disclosed veterinarian records be provided by the Society to the Panel after the hearing. A copy of the unredacted records was received by BCFIRB staff on September 11, 2024.

D. Material Admitted on this Appeal

14. The Panel identified all the documents received by BCFIRB in advance of the hearing as exhibits. The record comprises Exhibits 1-14.

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

15. On January 12, 2023, the Society received an anonymous complaint that Harlow was living in a filthy apartment and had an unkempt coat caked with fecal material. The complainant noted that Harlow was thin and didn't have access to food or water.

16. On February 12, 2023, an inspection of the Appellant's apartment was conducted by SPC Cheung. He noted that the apartment was cluttered, but that Harlow appeared to be healthy. The only issue noted by SPC Cheung was that he observed no water available for Harlow. SPC Cheung issued a written notice to clean the apartment and to provide water for Harlow. A follow-up visit was scheduled for February 15, 2023. SPC Cheung called the front desk at the Appellant's residence on February 15, 2023, and the person working at the front desk confirmed that the Appellant's apartment had been tidied.
17. On July 20, 2023, the Society received a complaint that Harlow was being left unsupervised with access to a window that would allow her to get out onto a breezeway that was 2 stories up and considered dangerous.
18. On August 1, 2023, SPC Cheung visited the Appellant's residence and found Harlow to be in good condition and her living area to be reasonably clean. The Appellant stated that Harlow's access to the dangerous breezeway had been accidental and that she had taken steps to prevent Harlow from gaining further access to the breezeway. SPC Cheung spoke to staff at the residence who stated that the Appellant cared for her dog and listened to recommendations regarding the dog's care. The staff members confirmed that the Appellant had requested that the building management secure the window to prevent Harlow from accessing the breezeway. SPC Cheung issued a written notice dated August 1, 2023, requiring the Appellant to continue cleaning Harlow's living space and to not let Harlow access any open window.
19. On September 25, 2023, the Society received a complaint that Harlow was limping badly and not receiving any veterinary care. The complainant also stated that Harlow was not being provided with food and water. SPC Cheung followed up by phone that day with staff at the residence who advised that they had not seen Harlow limping and that she was receiving food and water.
20. On October 3, 2023, the Appellant left a voice mail for SPC Cheung indicating that she wanted him to come and observe Harlow to confirm she was fine. On October 4, 2023, SPC Cheung went to the Appellant's residence and noted that Harlow was walking normally and was jumping up on the Appellant for treats without any issues. SPC Cheung considered this particular complaint to have been made maliciously against the Appellant.
21. On January 27, 2024, the Society received a complaint that Harlow was being left alone without food or water, was peeing and pooping around the residence and that the Appellant was not cleaning up the mess. SPC Cheung phoned the residence and spoke to staff who stated that Harlow was being provided with food and water and that her care was not an issue. Staff further advised that there was a dispute between Ms. Lepper and another resident and SPC Cheung again determined that the complaint was malicious. SPC Cheung did not visit the residence as a result.

22. On June 26, 2024, the Society received a complaint that Harlow had been frequently left unattended outside the Property and had been observed consuming foreign materials from the ground and subsequently showing signs of drug exposure on 3 separate occasions. The complainant further noted that Harlow had been treated with Naloxone for a possible drug overdose earlier that day. Photos were also submitted with the complaint.
23. On June 27, 2024, APO Sharma visited the Property and observed that Harlow was tied by her leash to a bike rack and was friendly and approachable. APO Sharma found the Appellant and asked about Harlow having eaten something off the ground while unattended and overdosing the day before. The Appellant confirmed that Harlow had appeared intoxicated, and that she had administered Naloxone. APO Sharma advised the Appellant that if Harlow was found unattended in front of the Property again that there would be more serious consequences besides warnings. The Appellant indicated that she understood.
24. On July 21, 2024, the Society received a complaint from a member of the public at the Property stating that Harlow seemed to have overdosed and had been administered Naloxone. The complainant also stated that this was not the first time that they knew of Harlow having overdosed. SPC Cheung arrived at the Property within 20 minutes of the phoned in complaint. He observed Harlow and the Appellant together with an open box of Naloxone (Narcan) next to them. The Appellant confirmed that Harlow had ingested foreign material and had shown the signs of an overdose and so she had administered the Naloxone.
25. SPC Cheung subsequently contacted APO Sharma about his investigation on June 27, 2024, to confirm that the Appellant had received adequate information and warning concerning the overdose risks of inadequate supervision.
26. SPC Cheung applied for a search warrant for the Property which he received and executed on July 22, 2024. When he arrived, Harlow was loose with her leash dragging behind her and Ms. Lepper was sitting approximately 20 feet away. SPC Cheung seized Harlow and took her to a veterinary facility where she was tested and found to be positive for cocaine, amphetamines and methamphetamines. Due to a long wait at that facility, SPC Cheung then took Harlow to another veterinary facility for a full examination which additionally diagnosed grade 3 dental disease. Following this examination Harlow was taken into custody at one of the Society's shelters.
27. On August 17, 2024, 26 days after she was taken into custody, Harlow was not eating, was incontinent, and was experiencing diarrhea. She was taken to a veterinary facility as a urinary tract infection was suspected. At the facility she was examined by a veterinarian, and a urinalysis, general blood chemistry panel and x-rays were carried out. A urinary tract infection was ruled out by the urinalysis and blood tests, however no alternate diagnosis was confirmed. Gabapentin (for pain and anxiety), and ForteFlora (a probiotic for diarrhea), were dispensed by the

veterinarian. Blood work indicated that Harlow had high liver enzymes and x-rays demonstrated a mildly enlarged liver suggesting a reaction in the liver. Chronic spondylosis or arthritis was noted by the veterinarian at multiple levels of the spine. Harlow appeared to have eaten something other than her normal kibble diet in a significant amount that was not causing a blockage but did show up as unusual contents on x-ray. Also noted was that Harlow had likely experienced dietary indiscretion.

F. Review Decision

28. On August 8, 2024, Ms. Moriarty issued her review decision in which she outlined her reasons for not returning Harlow to the Appellant (the “Review Decision”). She reviewed:
- File #381447 Inspection Follow-up Details (IFD) – July 22, 2024;
 - Notice of Disposition – July 22, 2024;
 - Veterinary Records for Harlo – July 22, 2024;
 - Urine Drug Screen Results for Harlo – July 22, 2024;
 - Veterinary Invoice for Harlo; and
 - Current Status List of Harlo
29. Ms. Moriarty was satisfied, based on the evidence, that the SPC reasonably formed the opinion that Harlow was in distress, in accordance with the PCAA, and that his action to take custody of the Animal to relieve the Animal of distress was appropriate. Ms. Moriarty further determined that returning Harlow to the care of the Appellant would invariably put Harlow back into circumstances where the risk of overdose was significant and as such she declined to do so.

G. Key Facts and Evidence

30. In an appeal under the PCAA, the Panel must determine whether Harlow was in distress when seized and if she should be returned to the Appellant. Below is a summary of the relevant 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.

Appellant Testimony

31. The Appellant stated that she has lived in the downtown east side for 3 years. She noted that for a period she had worked for the Atira Women’s Resource Society (ATIRA) and had been trained in that role to deal with pets and drug overdoses. The Appellant testified that she has recently moved to a high barrier residence which prohibits drug usage inside and in front of the building.

32. The Appellant stated that she has been diligent in keeping Harlow up to date in her vaccines.
33. The Appellant testified that Harlow likes to lick the ground, and she has not been able to break Harlow of that habit. The Appellant stated that she has purchased a high-pitched whistle training collar that she understood could help with training Harlow out of her licking habit.
34. The Appellant acknowledged the overdoses investigated by the Society but stated repeatedly that the drugs Harlow was exposed to were not hers and that the drugs were found by Harlow on the ground.
35. The Appellant stated that based on advice that she had received from ATIRA staff, she acquired a muzzle, booties and an electronic whistle training collar to protect Harlow from drug exposure and to train her not to eat drugs from the ground.

Appellant Witnesses:

A.W.

36. A.W. works for ATIRA which is an organization that focuses on supporting women in need. A.W. testified that the Appellant is one of her clients but that she is assisting the Appellant and advocating for her outside of that role with ATIRA.
37. A.W. testified that the Appellant properly provides Harlow with food and water and uses pet outreach and veterinary fairs for Harlow's care. A.W. had no direct knowledge of the Appellant exposing Harlow to drugs and the Appellant had not consulted or discussed Harlow's drug overdose experience with A.W.
38. A.W. confirmed that she has seen a muzzle that the Appellant has acquired for Harlow.

A.E.

39. A.E. is a friend of the Appellant who has spent some time with both Harlow and the Appellant. She testified that she has never observed any abuse of Harlow by the Appellant, and that the Appellant loves Harlow very much.
40. A.E. stated that she had seen Harlow exposed to drugs twice. Once while going for a walk with Harlow and the Appellant just off Main Street on the way to Alexander Street in Vancouver. Harlow was on the leash and picked something up off the street and began to act abnormally and appeared paranoid. A.E. went to the store to purchase something for Harlow to eat and drink to absorb what Harlow had ingested. This was in June or July of 2024.

41. The second instance that A.E. described having seen Harlow exposed to drugs, was with the Appellant at a location referred to as 'the tents' on Powell Street and Jackson Avenue in Vancouver. Again, A.E. stated that Harlow was acting paranoid. Again, A.E. went to a store to purchase something to feed to Harlow to absorb whatever drug she had eaten. To the best of her recollection this was earlier in the year, April, May or June of 2024.
42. A.E. Stated that she has volunteered to look after Harlow when the Appellant goes to detox, and that she is allowed to have a dog in her residence and at her work.

Respondent Witnesses:

SPC Cheung

43. SPC Cheung related the six complaints received by the Society concerning Harlow between February 2023, and July 21, 2024. Two of those complaints were deemed to be unfounded. His testimony focused on the complaint concerning the drug overdose experienced by Harlow on July 21, 2024, which led to the seizure.
44. SPC Cheung testified that on July 21, 2024, the complaint was received within an hour of the overdose occurring and that he responded to the Property within 20 minutes of having received it. When SPC Cheung asked what had happened to Harlow, the Appellant indicated that about an hour earlier Harlow had ingested drugs and had shown signs of overdosing. The Appellant further stated that she had administered Naloxone.
45. SPC Cheung observed Harlow to be quite lethargic. She wanted to lie down a lot, panted heavily, and circled when she did get up. He noted that her limbs were twitching.
46. When SPC Cheung asked the Appellant if she was going to take Harlow to be examined by a veterinarian, the Appellant responded that Harlow didn't need an examination as she had received the Naloxone. SPC Cheung stated that best practice was to have the dog examined as Naloxone only reverses opioids but not other drugs such as cocaine. The Appellant indicated that her veterinarian was closed as it was Sunday. SPC Cheung stated again that the recommendation was that Harlow be examined by a veterinarian after a life-threatening drug exposure.
47. SPC Cheung followed up with APO Sharma regarding the similar June 26, 2024, complaint. Based on his discussion with APO Sharma he concluded that the Appellant had previously been adequately informed of the risks and consequences of leaving Harlow without adequate supervision in an area where she had already experienced a drug overdose. SPC Cheung then proceeded to apply for a search warrant for the Property. He executed the warrant the next day.

48. When SPC Cheung returned on July 22, 2024, to execute the warrant, he found Harlow on a leash which was dragging on the sidewalk as she walked around unattended with Ms. Lepper in the area (about 20 feet away).
49. SPC Cheung stated that he has worked for 4 years in this area of Vancouver and responds to over 600 calls a year but has only removed 5 dogs for repeated drug exposures after the owners were given education and warned of the outcomes but did not heed the advice and resources provided by the Society.

APO Sharma

50. APO Sharma testified to the relevant events concerning his response to the complaint of the drug overdose Harlow experienced at the Property on June 26 2024, and on the background to that investigation.
51. APO Sharma stated that at the time of his attendance at the Property he was focused on explaining the concerns to the Appellant and providing her with an opportunity to correct the issue. He stated that he had stressed to the Appellant that she could not leave Harlow alone without adequate supervision without risking another accidental overdose

H. Analysis and Decision

52. 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.

53. 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.
54. We have also proceeded on the basis that the Appellant has an onus to show that the remedy they seek (return of Harlow) is justified. The first issue to consider is whether Harlow was in distress at the time of the seizure. Depending on the answer to that question, the next issue is to decide whether to return Harlow or whether doing so would return Harlow to a situation of distress.
55. The Panel is satisfied that Harlow was in distress at the time of the seizure on July 22, 2024, as defined by Section 1(2) of the PCAA. This finding is supported by the description of Harlow’s state of distress on July 21, 2024, even after receiving naloxone to treat the drug exposure which was the result of neglect through the lack of sufficient oversight of Harlow in a known high-risk environment, where she had previously overdosed. The Appellant was advised by SPC Cheung, and had a positive obligation under the PCAA, to provide Harlow with veterinary treatment.
56. The drug test administered by a veterinary clinic on July 22, 2024, further supports this finding as it showed positive results for cocaine, amphetamines and methamphetamines, none of which would have been ameliorated by the administration of naloxone.
57. The Appellant did not contest that Harlow suffered an overdose on July 21, 2024, and that the exposure was from Harlow finding and consuming drugs from the ground while not being monitored by the Appellant or a caregiver designated by the Appellant. The Appellant’s evidence that the drugs consumed by Harlow were not hers, does not alter the Panel’s finding that the Appellant failed to protect Harlow from that exposure and subsequently failed to provide her with proper veterinary care.
58. Having found that Harlow was in distress at the time of the seizure, the Panel must consider whether Harlow can be safely returned to the Appellant. The Panel notes as follows:
- The evidence demonstrates and the Panel finds as fact that Harlow experienced at least one previous overdose as well as other previous drug exposures.
 - The second overdose occurred, despite written and oral warnings having been given to the Appellant by the Society to provide better oversight. The Society made specific efforts to assist the Appellant and to prevent exactly

the problem (overdose) which had already happened once at the same location.

- In both cases the evidence shows that Harlow overdosed on an unknown amount of various life-threatening drugs and Naloxone (Narcan) had to be administered. The Panel accepts as a fact that the reversal effect of Naloxone works only on opioids, and based on drug testing on July 22, 2024, Harlow was also exposed to cocaine, amphetamines, and methamphetamines during the second overdose.
- The Appellant's witness A.E. described two occurrences of exposure to street drugs. These incidents occurred at indeterminate times between May and July 2024, at locations distant from the Property. The occurrences did not require the administration of Naloxone, and no drug testing was carried out.
- The Panel recognizes that some, or many of the complaints that led the Society to scrutinize the Appellant's care of Harlow were malicious. However, the events observed by the Society officers in the resulting investigations justified the seizure of Harlow.
- The Appellant has made positive changes to where she resides and has planned for Harlow's care when she enters a detox program on October 8, 2024. She admitted responsibility for Harlow being put in life-threatening situations due to repeated drug exposures, and credibly stated her desire to do better and described the steps that she has taken with that in mind. These are all admirable steps, but do not fully address the risk of Harlow being exposed to street drugs again.
- The plan put forward by the Appellant would have Harlow returned to high-risk situations of drug exposure due to Harlow's now ingrained habit of consuming material from the ground in an environment where street drugs are available for her consumption. Her plan also includes leaving Harlow under the care of persons other than the Appellant occasionally in that same environment. The likelihood of further overdoses is very high, and as in any set of circumstances where the likelihood of further distress is very high the Panel is obliged to put the interests of the animal above the emotional connection to or reliance on that animal by the Appellant. The Panel acknowledges that the Appellant is very emotionally connected to Harlow, but that emotional connection cannot, on its own, be given priority over the significant risk of distress.

59. The Panel does not find that returning Harlow to the care of the Appellant would be in Harlow's best interest due to the very high risk of further distress from potential drug exposures. As such, the Panel orders that Harlow will remain in the care of the Society and pursuant to section 20.6 of the PCAA that the Society is permitted in its discretion to destroy, sell, or otherwise dispose of Harlow, with the obvious hope that Harlow will be adopted unless circumstances somehow preclude that possibility.

I. **Costs**

60. 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.

61. 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)”.

62. The Society is seeking costs as follows:

(a) Veterinary costs:	\$607.93
(i) July 22, 2024, \$82.95	
(ii) August 20, 2024, \$524.98	
(b) SPCA time attending to seizure:	\$68.48
(c) <u>Housing, feeding and caring for the Animal:</u>	<u>\$1,058.35</u>
(d) Total:	\$1,734.76

63. 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 the care of the Animal. The calculation of these estimates has been reviewed and supported in previous appeals.

64. The Appellant acknowledged that the Society had incurred costs because of the seizure and did not contest the evidence presented by the Society regarding costs.

65. Having reviewed the materials presented by the Society the Panel has removed the costs for the veterinary visit on August 20, 2024, (\$524.98). The cause of the problem that required Harlow to be presented to a veterinary clinic was not due to a pre-existing or chronic problem but to circumstances that arose while in the care of the Society and specific to that care. No justification for this cost was presented in evidence. Additionally, the cost for the Society’s time attending to the seizure

(\$68.48) was removed. The Panel could find no justification for this charge for what the Panel considered the normal work of the Society as stated in their mandate.

J. Order

66. 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.
67. The Panel finds that Harlow was in distress at the time of the seizure and that it is in the interests of Harlow to remain in the care of the Society.
68. 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 Harlow, with the obvious hope that Harlow will be adopted unless circumstances somehow preclude that possibility.
69. The Panel further orders, pursuant to s. 20.6(c) of the PCAA, that the Appellant is liable to the Society for the cost of the Veterinary services rendered at seizure and the care and feeding of Harlow while in custody to the amount of **\$1,141.30** as the reasonable costs incurred by the Society with respect to caring for Harlow.

Dated at Victoria, British Columbia this 20th day of September 2024.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Jane Pritchard, Presiding Member