



July 21, 2017

File: PCAA/File #17-08

DELIVERED BY EMAIL & REGISTERED MAIL

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RE: Marleau v. British Columbia Society for the Prevention of Cruelty to Animals

Introduction

This ruling concerns the Society's July 7, 2017 request that its entitlement to care costs under s. 20 of the *Prevention of Cruelty to Animals Act* be increased to account for 78 days' boarding of the farm animals it removed from the Appellant and was permitted to keep (the time between the date of removal and the date of the Decision), instead of the 71 days referenced in my Decision, upon which the Society originally calculated its care costs claimed in the appeal: *Sarah Marleau v British Columbia Society for the Prevention of Cruelty to Animals* (the Decision).

For the reasons that follow, the Society's request is denied.

Background

On June 15, 2017, BCFIRB heard the appeal by way of telephone hearing.

On July 7, 2017, BCFIRB issued the Decision.

The Decision was about whether the Society validly removed and should be required to return 23 farm animals and a dog owned by the Appellant. Paragraphs 238 and 239 of the Decision state as follows:

238. With regard to the farm animals, it is my order, pursuant to section 20.6(b) of the *PCAA*, that the Society be permitted in the Society's discretion, to destroy, sell or otherwise dispose of all of the farm animals.

239. With regard to the dog Jake, it is my order, pursuant to section 20.6(a) of the *PCAA*, that the Society be required to return the dog Jake to its owner or the person from whom custody was taken, without conditions.

**British Columbia
Farm Industry Review Board**

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The Decision also addressed the Appellant's liability for the care costs of the animals: Decision, paras. 241-254.

The Society's costs claim was outlined in Ms. Moriarty's June 9, 2017 affidavit. Paragraph 20 of that affidavit stated that: "The Society is seeking costs in **the total amount of \$12,680.99** pursuant to s. 20 of the [PCAA]..." [emphasis in original].

Ms. Moriarty's costs breakdown included the costs for "housing, feeding and caring for" each animal. While the daily cost varied depending on the type of animal, the daily cost was in each case multiplied by 71 days, stated as follows:

April 20, 2017 to June 29, 2017 (being the anticipated date of the BCFIRB decision)¹ [emphasis added]

The June 29, 2017 date was determined based on the June 15, 2017 hearing (which had by then been set) and BCFIRB's practice of issuing its decisions within 10 business days from the completion of the hearing (discussed further below).

The Society maintained its specific cost claim in its June 12, 2017 written submission, prior to the hearing (paras. 77-78) and continued to maintain that specific claim in its June 19, 2017 written closing argument, submitted after the hearing: paras. 80-81.

The Society's written closing was submitted after the hearing because, unlike most other *PCAA* appeal hearings, there was no time for oral closings during the telephone portion of the hearing. The parties therefore agreed to submit written closings, with the Society agreeing to go first with a due date of June 19, 2017 and the Appellant responding by the due date of June 21, 2017.

Thus, while the parties were advised at the start of the hearing process that the Panel would deliver its written decision and reasons ten working days later, on June 29, 2017, it would have been apparent to the Society that that date might well change given the need for written closings (which is unusual) and given BCFIRB's *Practice Directive* dealing with the usual time for completing *PCAA* appeals, which states:

2. The usual time period within which the final decision and reasons of a panel hearing an appeal are to be released is not later than 10 business days following the completion of the hearing. [emphasis added]

...

4. The reference in s. 12 of the ATA to the "usual time period" recognizes that circumstances will arise where it is impractical or unjust to complete a matter within the usual time period. In such cases, BCFIRB will on a case by case basis establish time periods which are as short as possible consistent with the realities of the case.

Unusually in this case, on June 21, 2017, the Society applied to provide additional information to BCFIRB, to consider on the appeal, regarding the execution of a new warrant on the property. The Society's request prompted the following response from BCFIRB:

¹ Affidavit of Marcie Moriarty, para. 15A.

This will confirm that your email of 11:25 a.m. today – received after BCFIRB’s receipt of Ms. Marleau’s closing submission - has been received by BCFIRB and has been brought to the panel’s attention.

The panel Chair has instructed me to advise the parties that Ms. Marleau will have until the end of business on June 23, 2017 to provide her position with regard to (1) whether this new information should be received as evidence on this appeal, and (2) if the panel decides to accept the new information as evidence on this appeal, her position regarding its content and its significance for the issues the panel has to decide on this appeal. The Society will have until noon on June 27, 2017 to reply.

Unless the panel chair decides, following the receipt of these submissions, that further evidence or submissions are necessary arising from this new information, the panel will provide its ruling with regard to this new information as part of its final decision.

The Decision

In this context, paragraphs 247 and 254 of the Decision state:

247. The position of the Society is that as the Society continues to care for the animals, the Society incurs costs to provide food, shelter and other care for the animals. The costs claimed by the Society total \$12,680.99 and the Society has not increased its request based on the longer time for BCFIRB to deliver its decision based on the extended submission schedule.

...
254. Pursuant to s. 20.6(c) of the PCAA, I have varied the reasonable costs owing by the Appellant the Society to be of **\$11,844.56**. I have calculated this amount by taking the total cost of care claimed by the Society (\$12,680.99), and reducing the boarding costs claimed by the Society for Jake from 71 days to 22 days (49 days x \$17.07/day – total cost reduction of \$836.43).

The Society’s request

Following its receipt of the Decision, the Society wrote to BCFIRB asking that BCFIRB reconsider the costs:

Paragraph 247 of the decision dated July 7, 2017 (the “Decision”) notes that “...*the Society has not increased its request based on the longer time for the BCFIRB to deliver its decision based on the extended submission schedule*”. However, we note that the Society was not previously advised that the Decision would be delayed. We have attached an email dated June 21, 2017, wherein it was advised that additional deadlines had been provided for the parties to make submissions regarding the new information presented by the Society that same day. While it was understood that additional time would be given for the submissions, it was not clear, nor was it outlined in the email that additional time would be required by the BCFIRB to render the Decision. Had the Society been provided with notice of the same, the Society would have requested that its costs be recalculated to account for the additional days. [underlining mine]

Based on this request, the Society has amended its costs claim, based on caring for the farm animals for 78 days as opposed to 71 days, thus requesting an increase in its costs entitlement by \$731.50, from \$11,844.56 (as set out in the Decision) to \$12,576.06.

Discussion

Section 53 of the *Administrative Tribunals Act (ATA)* only allows a final decision to be reopened in very limited circumstances, as for example where there has been a clerical, accidental or arithmetic error, or where there has been a “jurisdictional defect”. I find none of the above here.

The Society’s position is based on its view that the onus was on BCFIRB to notify the Society that the Decision would not be released by June 29, 2017. With respect, I do not agree.

The Society, which is represented by legal counsel, should be taken to know that a hearing is not completed until all steps related to that hearing, including submissions, are concluded. In this case, given the agreed process and timing for written closings, and given the new information tendered by the Society on June 21, 2017 (which gave rise to a further submissions process that did not conclude until June 27, 2017), it should have been readily apparent to the Society that there was a significant prospect that the panel would not be in a position to render the Decision by June 29, 2017. In those circumstances, the onus was on the Society to notify BCFIRB and amend its claim for costs, if it wished to claim additional per diems, based on any additional time that would be necessary to consider the written closings and the issue arising from the new information submitted late in the day by the Society.

The Society is a sophisticated party. It is not required to frame its costs claim in absolute terms; it can frame its “housing and feeding” claims in per diem terms “up to the date of the decision” if it wishes to do so. Where the Society chooses to claim a specific costs amount, it is not BCFIRB’s role to assume that the Society would always necessarily want to claim a greater amount. There are many factors that influence what amount of costs the Society may wish to claim in respect of a particular appellant for particular animals. These might include, for example, the Society’s assessment of a party’s ability to pay, the likelihood that it would take enforcement action, and the additional amounts involved.

Where, as here, the prospect of additional time to issue the Decision had become or should have become readily apparent in all the circumstances, it would have been a simple matter for the Society to notify BCFIRB and the Appellant that it was amending its costs claim to a per diem amount for care costs up to the date the Decision is issued. As noted at paragraph 247 of the Decision, the Society did not do that. I do not accept that in the circumstances here, the onus was BCFIRB to notify the Society that the Decision would not be issued two days after the completion of the hearing.

I find that there is no basis to reopen the costs award under s. 53 of the *ATA*. As a result, the Decision stands.

The Appellant’s request

On July 13, 2017, in response to the Society’s request, the Appellant wrote to BCFIRB stating that “I would also like costs reassessed” on the basis that Jake the dog was in foster care, not a shelter, and Jake is now having behavioral issues and a lower body weight. The Society responds

that Jake the dog was indeed moved to foster care but that was long after the date for which costs were awarded, and no other reassessment for Jake ought to be considered.

If the Appellant wished to argue that Jake was in foster care, not a shelter, the time to do that was during the hearing process, not after the hearing. As is the case with the Society's submission, I find that there is no basis to reopen the Decision on this issue under s. 53 of the ATA. I also note that, even if there was a basis to reopen, the Appellant did not provide any evidence to contradict the Society's position about when Jake was moved to foster care.

Conclusion

For the reasons I have given, there will be no reassessment of costs for either party for any of the reasons they each present.



Corey Van't Haaff, Vice Chair
Presiding Member