



September 5, 2014

File: PCAA/#14-06

DELIVERED BY EMAIL

Diana Andrussek

Marcie Moriarty
Chief Prevention and Enforcement Officer
BC Society for the Prevention of
Cruelty to Animals
1245 East 7th Av
Vancouver BC V5T 1R1

Dear Mesdames:

**AUGUST 28, 2014 DECISION OF THE BC SOCIETY FOR THE PREVENTION OF
CRUELTY TO ANIMALS (BC SPCA) REGARDING THE SEIZURE OF FOUR DOGS
AND ONE CAT**

Under the *Prevention of Cruelty to Animals Act (PCAA)*, a person aggrieved by a seizure decision of the BC SPCA may appeal to the BC Farm Industry Review Board (BCFIRB).

Section 20.3(2)(b) of the *PCAA* requires appeals from BC SPCA decisions such as the August 28, 2014 decision to be filed, complete with filing fee, within four days of the decision. In the interest of timeliness in addressing animal welfare issues, there is no provision under the *PCAA* to extend the filing time for appeals.

However, under s. 22(4) of the *Administrative Tribunals Act (ATA)*, BCFIRB may “allow for a reasonable period of time within which the notice (of appeal) may be corrected or the fee is to be paid”. That period of time has been established by BCFIRB – and as also reflected in Rule 1 of this board’s draft ‘Rules of Practice and Procedure’ – as being within two days of first receipt of a notice of appeal. However, the Rules also contemplate that as recognized by s. 11(3) of the *ATA*, a rule may be waived or modified in any particular case if BCFIRB considers there are exceptional circumstances.

The August 28, 2014 decision was received by the appellant on that date and advised of the right of appeal to BCFIRB, noting that “the appeal is time sensitive” and provided BCFIRB telephone and email contact information. In telephone and email communication with the appellant on September 2, 2014, BCFIRB case management staff confirmed the strict timelines for the filing

**British Columbia
Farm Industry Review Board**

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of an appeal and the requirement to submit the filing fee not later than two days after the notice of appeal was received by BCFIRB.

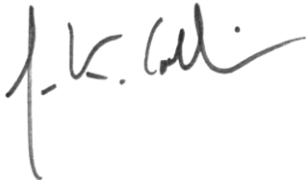
The notice of appeal was received by BCFIRB on September 2, 2014, within time. The filing fee was received September 5, 2014, not within the two days established by BCFIRB. The question before me is whether there are any “exceptional circumstances” that warrant this rule being waived or modified.

The appellant was aware that the filing fee needed to be received by BCFIRB no later than the close of business on September 4, 2014. On September 3, 2014, the appellant advised BCFIRB case management staff that she had that day sent the filing fee by Canada Post ‘Priority Courier’ for “next day” delivery. The envelope conveying the filing fee to BCFIRB confirmed that it was sent by courier on September 3, 2014.

The appellant could have sent the filing fee earlier – including on September 2, 2014, the same date the notice was filed. However, the appellant was generally proactive in communicating with BCFIRB case management staff to ensure she understood what was required and took steps to meet those requirements. I find that through use of a courier service promising next day delivery, the appellant had a reasonable expectation that Canada Post would deliver the filing fee by the September 4, 2014 deadline.

Accordingly, I find that exceptional circumstances exist here with respect to the receipt of the filing fee and therefore have determined that the appeal was received in time.

Yours truly,

A handwritten signature in black ink, appearing to read "J. K. Collins". The signature is fluid and cursive, with a long horizontal stroke at the end.

Jim Collins
Executive Director/Registrar